

**Report of the Independent Review Panel conducting
The Independent Review of the Controls on Infant Formula
and Follow-on Formula**

February 2010

Acknowledgements

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Chair, Review Panel

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Executive summary

Introduction

1. Adopted in 2006, European Commission Directive 2006/141/EC up-dated the compositional standards for infant formula and follow-on formula and, following a request from the UK, strengthened the measures controlling the advertising and presentation of these products. The new controls require infant formula and follow-on formula to be advertised and presented in such a way that enables consumers to make a clear distinction between such products so as to avoid any risk of confusion.
2. In November 2007 the then Minister of State for Public Health announced a package of measures to strengthen the legislation. The new Infant Formula and Follow-on Formula Regulations (2007) Regulations (hereafter 2007 Regulations) implement Directive 2006/141/EC and are accompanied by guidance notes setting out how to apply the new controls.
3. As part of this announcement the Minister made a commitment to assess the effectiveness of the new controls by means of an independent review (detailed in paragraphs 16 and 17 below).
4. This document is the report of the independent panel tasked with carrying out that review.

Review remit and objective

5. The Minister of State for Public Health took key stakeholders' views into account before presenting the panel with the following objective for the review (detailed in paragraphs 18 to 21):

To assess whether the new controls upon the ways in which follow-on formula are presented and advertised have been effective in making it clear to parents/parents to be and carers that advertisements for follow-on formula are meant only for babies over 6 months and are not perceived or confused as infant formula advertising, which is prohibited.

6. The review panel was specifically asked to:
 - (a) *Establish the effect of the new controls on the ways in which infant formula and follow-on formula are presented and advertised.*
 - (b) *Establish whether consumers are clear that presentation of, and advertising of, follow-on formula relates to formula for older babies and not infant formula.*
 - (c) *Establish if infants under 6 months of age are being fed follow-on formula and if so the reasons why.*

(d) *Identify any enforcement issues which have arisen since the new controls came into force.*

The way the review panel worked

7. The panel carefully considered the review's objective and remit and in particular the review's place within the wider context of infant feeding, noting that the factors affecting breast feeding are multiple and complex and there will be many influences affecting feeding decisions. The panel is aware that some have criticised the remit and continue to do so, calling for a wider remit to assess whether follow-on formula marketing undermines breast feeding. None the less, the panel recognises that the review's remit stems from the new controls introduced by Directive 2006/141/EC and that the review itself would inform policy in this regard. However, the panel was, and remains, sensitive to the manner in which the remit considers a small, but important aspect of the wider issues relating to the marketing and advertising of infant formula and follow-on formula. Throughout the review the panel was careful to preserve a suitable balance between this wider context and the work that needed to be done properly to address its remit and objective (detailed in paragraphs 28 to 31 below).
8. The panel agreed that the review should be based on the best available evidence and that this evidence should be robust and able to withstand scrutiny. However, in doing so the panel was careful not to impose an *a priori* hierarchy, but rather considered the evidence on its merits, paying particular attention to: the assumptions on which the evidence was based; the limitations to which it is subject; and the extent to which the source of information reflects vested interests in whatever topic is under scrutiny (detailed in paragraphs 44 to 47 below).
9. In order to answer the specific questions set out in the remit, the panel considered information and evidence from four sources:
 - (i) Key stakeholders were asked to submit information/evidence that they considered relevant to the review (detailed in paragraphs 97 to 123 below).
 - (ii) Research on the ways in which infant formula and follow-on formula are presented and advertised (detailed in paragraphs 124 to 147 below).
 - (iii) Research on whether infants under 6 months are being fed follow-on formula and if so the reasons why and whether consumers are clear that the presentation of, and advertising of, follow-on formula relates to formula for older babies and not infant formula (detailed in paragraphs 148 to 180 below).
 - (iv) Analysis of loyalty card data to establish those purchasing follow-on formula (detailed in paragraphs 181 to 193 below).

Stakeholder contribution

10. From the outset the panel acknowledged the important role of key stakeholders, the different views they represent and expertise they bring. As such, key stakeholders have been involved and have been able to contribute throughout the life of the review. The panel agreed that it was important to consider any information key stakeholders thought relevant to make available. Further details of stakeholders' contributions to the review can be found in paragraphs 52 to 59 below.

Overall findings, conclusions and recommendations

11. Before even the panel was appointed, the conclusions of this review — and indeed any similar review — could be described as leading to one of three alternative recommendations for action:

- (i) the controls are effective and no action is necessary.
- (ii) the controls are not effective and the only way to ensure no confusion would be to bring them into line with the controls on infant formula.
- (iii) the controls are working to some extent, but could be enhanced/strengthened.

12. The panel's overall finding is that even though all evidence and information available to it indicates that, to some extent, the controls are having the desired effect it is not possible categorically to conclude that *all* are clear. Therefore the panel concludes that a case cannot to be made for recommending no action. At the same time, most parents, parents-to-be and carers are clear that advertisements for follow-on formula are meant only for babies over six months (detailed in paragraph 227 below) and do not confuse them with or perceive them as infant formula advertising. Accordingly, the panel came to the conclusion that there was not sufficient evidence to recommend the controls be brought into line with the controls on infant formula i.e. banning follow-on formula advertising.

13. Having reached the conclusion that the controls should be enhanced/strengthened the panel drew on evidence and information from the review (detailed in paragraphs 196 to 227 below) to make the following recommendations for the way this could be achieved:

Recommendation 1 — In order to increase the chances of achieving clarity, it is recommended that manufacturers make all the following changes to advertising:

- **Provide text relating to age suitability in a box, in bold or underlined.**
- **Specify, unambiguously, the age of the child for whom the product is intended in the voiceover of television advertisements**
- **Ensure that the infants shown in follow-on formula advertising are unambiguously aged six months and over: for example by demonstrating features such as good head and arm control; sitting upright; having hair and teeth; showing emotional facial expression; being in an outdoor environment; self-feeding**
- **Increase the size and enhance the clarity of product images (i.e. packshots)**

Recommendation 2— The nature of the problems encountered when enforcing the Regulations should be characterised and steps taken to address these.

Additional points

14. Analysis of the research and other information highlighted points, which although outside the remit, the panel judged warranted special mention (detailed in paragraphs 235 to 240 below). In particular the panel encourages the Department of Health and Food Standards Agency, in conjunction with other interested parties and agencies, to consider the need to strengthen and ensure a full, broad, cross departmental and systematic public health strategy to promote and support breast feeding. More specifically the panel was struck by the findings of the qualitative research that healthcare professionals did not always provide information on formula feeding and as a result parents, parents-to-be and carers sought information from other sources including company carelines. The research also highlighted that the terms “infant formula” and “follow-on formula” are not immediately understood. Instead parents, parents-to-be and carers identified products in relation to their suitability for successive months of life, recognising them as Stage 1, 2 and 3. Formula manufacturers label the products accordingly. The panel suggests these additional points be taken into account in the organisation and management of relevant services.

Introduction

The European Commission Directive 2006/141/EC

15. The European Commission Directive 2006/141/EC on infant formulae and follow-on formulae brought the compositional standards for infant formula and follow-on formula in line with new advice from the Scientific Committee on Food (SCF, 2003). At the UK's request, the suitability of the controls relating to the advertising of follow-on formula were reconsidered, particularly in light of views that the advertising of follow-on formula could give rise to confusion with infant formula and thus risk undermining breast feeding. It was agreed to strengthen the measures controlling follow-on formula advertising by introducing the following new controls:

Article 13 paragraph 7 of European Commission Directive 2006/141/EC states:

“Infant formulae and follow-on formulae shall be labelled in such a way that it enables consumers to make a clear distinction between such products so as to avoid any risk of confusion between infant formulae and follow-on formulae.”

Article 13, paragraph 8 states:

“The requirements, prohibitions and restrictions referred to in paragraphs 3 to 7 shall also apply to:

- (a) the presentation of the products concerned, in particular their shape, appearance or packaging, the packaging materials used, the way in which they are arranged and the setting in which they are displayed;
- (b) advertising.”

The Infant Formula and Follow-on Formula (2007) Regulations

16. In November 2007 Dawn Primarolo the then Minister of State for Public Health announced a package of measures to strengthen the legislation (FSA, 2007a). The new Infant Formula and Follow-on Formula Regulations (2007)* (hereafter the 2007

* The Infant Formula and Follow-on Formula Regulations (2007) refer to; The Infant Formula and Follow-on Formula (England) Regulations 2007 (SI 2007/3521) http://www.opsi.gov.uk/si/si2007/pdf/uksi_20073521_en.pdf; The Infant Formula and Follow-on Formula (England) (Amendment) Regulations 2008 (SI 2008/2445) www.opsi.gov.uk/si/si2008/uksi_20082445_en_1; The Infant Formula and Follow-on Formula (Scotland) Regulations 2007 (SSI 2007/549) www.oqps.gov.uk/legislation/ssi/ssi2007/ssi_20070549_en_1; The Infant Formula and Follow-on Formula (Scotland) Amendment Regulations 2008 (SSI 2008/322) www.opsi.gov.uk/legislation/scotland/ssi2008/pdf/ssi_20080322_en.pdf; The Infant Formula and Follow-on Formula (Wales) Regulations 2007 (SI 2007/3573 (W.316))

Regulations) implement European Commission Directive 2006/141/EC and control the composition, labelling and marketing of infant formula and follow-on formula. The 2007 Regulations include new controls that require the labelling, presentation and advertising of infant formula and follow-on formula to avoid any risk of consumers being confused between the two types of products. The Food Standards Agency issued guidance on the interpretation of the 2007 Regulations and how to apply the new controls (FSA, 2008a).

17. During public consultation on the draft Infant Formula and Follow-on Formula Regulations (2007), some interested parties raised concerns that the new controls were insufficient to address the nature of follow-on formula advertising. Therefore, they called for the legislation to ban all commercial promotion of follow-on formula^{8†}. In responding to these concerns the Minister decided there should be an independent review of the effectiveness of the new controls (FSA, 2007a). As equivalent Regulations exist in England, Wales, Scotland and Northern Ireland, it was decided that the review should cover the whole of the UK (DH and FSA, 2008a). This document is the report of that review.

www.opsi.gov.uk/legislation/wales/wsi2007/wsi_20073573_en_1; The Infant Formula and Follow-on Formula (Amendment) (Wales) Regulations 2008 (SI 2008/2602 (W.228))
www.opsi.gov.uk/legislation/wales/wsi2008/wsi_20082602_en_2; The Infant Formula and Follow-on Formula Regulations (Northern Ireland) 2007 (SR 2007/506)
www.opsi.gov.uk/sr/sr2007/nisr_20070506_en_1; The Infant Formula and Follow-on Formula (Amendment) Regulations (Northern Ireland) 2008 (SR 2008/405)
www.opsi.gov.uk/sr/sr2008/nisr_20080405_en_2

[†] Superscript numbers refer to documents key stakeholders provided to the panel and correspond to the numbers given in annex 9. Other documents that informed the panel's writing of this report are referenced in the text and are listed at the end of this report.

Review remit and objective

Origins of the review's objective and remit.

18. In setting out the following objective for the review, the Minister considered the new controls introduced by Directive 2006/141/EC, the transitional arrangements in the 2007 Regulations (detailed in paragraph 84 below) and discussions with key stakeholders (detailed in paragraphs 53 and 54 below):

To assess whether the new controls upon the ways in which follow-on formula are presented and advertised have been effective in making it clear to parents, parents-to-be and carers that advertisements for follow-on formula are meant only for babies over six months and are not perceived or confused as infant formula advertising, which is prohibited.

19. In delivering this objective, the Minister specifically asked the panel to:

(a) Establish the effect of the new controls on the ways in which infant formula and follow-on formula are presented and advertised.

(b) Establish whether consumers are clear that presentation of, and advertising of, follow-on formula relates to formula for older babies and not infant formula.

(c) Establish if infants under six months of age are being fed follow-on formula and if so the reasons why.

(d) Identify any enforcement issues which have arisen since the new controls came into force.

20. As the panel's conclusions and recommendations (detailed in paragraphs 241 - 244 below) would help inform policy in the area of infant feeding and in particular the controls on the advertising and presentation of infant formula and follow-on formula, the Minister also asked the panel to assess whether the new controls were fulfilling their objective or whether further action was needed and, if so, what future action may be appropriate. The review's objective, remit and membership of the panel, were published on 9 April 2008 (FSA 2008a).

Stakeholder Involvement

21. Key stakeholders were involved in the development of the review's objective and remit. Representations from a wide range of interested parties (including consumer organisations, public health groups, formula companies and Local Authority Co-ordinators of Regulatory Services (LACORS)) were invited to a meeting on 8 January 2008 with the Department of Health and the Food Standards Agency to comment on the

remit of the review (DH and FSA, 2008b). The minutes of that meeting are published as paper IFR – 6[‡].

22. Key stakeholders were given an opportunity to comment on the specific membership of the panel in April 2008. The panel was then finalised in May 2008. Membership of the panel is provided as Annex 1.

Definitions

23. For the purposes of the review, and taking into account the review’s objective and remit, the terms “advertising”, “presentation” and “promotion” were given the same meanings and interpretation as in the 2007 Regulations and in the guidance:

- Advertising – the interpretation used was that given in appendix 1 of the guidance notes on the infant formula and follow-on formula Regulations 2007 revision 2, (FSA, 2008b).
- Presentation – the meaning given in regulation 20 of the 2007 Regulations was used. Therefore, “presentation” was taken to “includes the shape, appearance or packaging of the products concerned, the packaging materials used, the way in which they are arranged and the setting in which they are displayed.”
- Promotion – this term was taken to have the scope set out in regulation 23 of the 2007 Regulations; regulation 23 sets out the restrictions on the promotion of infant formula and states, “No person shall at any place where any infant formula is sold by retail:....
....
(b) make any special display of an infant formula designed to promote sales;
(c) give away –
(i) any infant formula as a free sample, or
(ii) any coupon which may be used to purchase an infant formula at a discount;
(d) promote the sale of an infant formula by means of premiums, special sales, loss-leaders or tie-in sales; or
(e) undertake any other promotional activity to induce the sale of infant formula.” (The Infant Formula and Follow-on Formula Regulations 2007).

24. Regulation 23 of the 2007 Regulations also prohibits manufacturers or distributors of infant formula from providing to the general public, pregnant women, mothers or their families, for promotional purposes, any infant formula free or at reduced or discounted price or any gift designed to promote the sale of infant formula. The prohibition applies whether such promotional activity is carried out directly or indirectly through the health care system or health workers.

[‡] <http://www.food.gov.uk/multimedia/pdfs/committee/ifr6.pdf>

25. Throughout, the accompanying guidance to the 2007 Regulations specifies that features of advertising are to be clear. The use of the word “clear” by the panel and in this report follows and reflects its usage in that guidance. For instance, paragraph 23 of the guidance (FSA, 2008b) reads:

“23. Manufacturers are also encouraged to clearly state the age range that the product is suitable for on the front of the packaging. The font size for the age range declaration should be no smaller than that used for the term ‘infant milk’ or ‘infant formula’ on the front of the packaging.”

Timescale

26. The review panel held its first meeting on 5 June 2008 and its final meeting on 29 October 2009. Annex 2 sets out the timeline for the review.

27. At the final meeting in October 2009 the panel reviewed its conclusions and recommendations taking into account all the evidence and information it had considered.

The way the review panel worked

Discussions around the remit

28. The panel carefully considered the review's objective and remit and in particular the review's place within the wider context of infant feeding. The panel noted the Department of Health commitment to the promotion of breast feeding (DH and FSA 2008c) and to overcoming problems which might discourage breast feeding, and recognised that infant feeding is a sensitive and highly contentious issue. The panel also noted that the factors affecting breast feeding are multiple and complex and that there are many influences affecting a decision to breast feed, including for example, peer influences and employment practices (SACN, 2008).
29. One component of this much wider public health context is the influence the marketing of infant formula and follow-on formula may have on breast feeding rates and measures. The panel is aware of the WHO's International Code of Marketing of Breast-milk Substitutes (WHO, 1981) which recommends that infant formula is not to be advertised lest it undermine breast feeding and that this recommendation is given effect through controls on marketing of infant and follow-on formula, contained within Directive 2006/141/EC (EC, 2006), which is in turn implemented in the UK by the 2007 Regulations. The panel was made aware that although follow-on formula advertising is permitted, and controls exist in relation to the content of such advertisements, concerns had been raised that they may be seen by parents, parents-to-be and carers as advertising infant formula (the advertising of which is not permitted to the general public) and thereby undermine breast feeding.
30. The panel noted that Directive 2006/141/EC includes new controls that require the labelling, presentation and advertising of such products to avoid any risk of consumer confusion. It was to assess the effectiveness of these new controls that the Minister set up the present review. The panel is aware that some have criticised this remit and continue to do so, calling for a wider remit to assess whether the marketing of follow-on formula undermines breast feeding. In particular certain stakeholders made these views known at their meeting with the Department of Health and Food Standards Agency on 8 January 2008 (detailed in paragraphs 53 and 54 below). Their concerns were also the subject of an adjournment debate on 16 January 2008 (Hansard, 2008), which took place prior to the remit and objective being agreed by the Minister in April 2008.
31. The panel is aware that the review's remit stems from the new controls introduced by Directive 2006/141/EC and that the review itself would inform policy in this regard. Throughout its work, the panel grappled with preserving a suitable balance between the bigger picture (which lay beyond the review remit and objectives, but was, all the same, the source of the rationale for devising it) and the work that needed to be done properly to address the remit and objectives clearly set out by the Minister of State for Public Health.

How the review would be conducted

32. As well as accepting the objective and remit presented to it (DH and FSA 2008a), the panel also agreed to the processes and procedures to be observed during its work (DH and FSA 2008d); and agreed the timeline for the review. The timeline, including key dates, is provided as Annex 2. Details of the management of the review, the review panel's processes and procedures and arrangements for declarations of interest were presented as papers IFR-1, IFR-2 and IFR-3 for this meeting[§]. The panel agreed that although stakeholders were not invited to attend panel meetings, it was important that they be kept informed about the panel's work through the dedicated section of the Food Standards Agency's website^{**}. This website includes details of the panel's work and remit, together with meeting minutes.
33. The panel also invited key stakeholders to provide material, not only as a means of accessing important information relevant to the review, but also information and views on the wider public health issues. A list of these key stakeholders is provided as Annex 3.

Information and evidence to inform the review

34. At its first meeting on 5 June 2008, the panel discussed the evidence and information needed to inform the review and underpin any resulting recommendations. The panel agreed that the review should consider all available, relevant material and that the information and evidence upon which the conclusions and recommendations were finally based should be robust and able to withstand scrutiny. The panel recognised that, in practice, this required attention to the quality of the information and evidence.
35. The panel recognised the likelihood of gaps in the evidence base and commissioned research to help address the specific questions set out in its remit. Addressing each of the four parts of the remit, set out in paragraph 19 above, resolved into the following:-
- i. Part (a) – dedicated and systematic study of the content of presentation and advertising itself.
 - ii. Part (b) – dedicated and systematic investigation of consumers' understanding of advertising.
 - iii. Part (c) – dedicated and systematic investigation to identify instances of infants under six months of age being fed follow on formula, and seek the reasons for this.
 - iv. Part (d) – inviting the submission of information, especially from Local Authorities and the Advertising Standards Authority, who have responsibility for enforcement.
36. The panel remained sensitive to the manner in which the remit concerns a small but important part of a much wider set of major public health concerns and commitments to

[§]www.food.gov.uk/healthiereating/nutcomms/infformreview/irpmeetingsbranch/irpmeet080605

^{**} <http://www.food.gov.uk/healthiereating/nutcomms/infformreview/>

promote and support breast feeding and considered this when it discussed the evidence and information that would be needed to inform the review. The panel sought to remain well informed in this respect, and agreed that one important means of doing so was to request key stakeholders to supply information.

37. Ultimately the panel considered material from four sources:

- i. **Material submitted by stakeholders** – The panel wanted to ensure that they took into account useful material known to key stakeholders. Therefore, they twice invited these stakeholders to submit any material they considered relevant to the review. The panel used this material both to inform its consideration of the review’s objective and remit, and to provide the background and context for the review.
- ii. **Research project one – the nature of advertising and presentation.** Specific research was commissioned to address element (a) of the remit. This project established as far as possible whether the advertising and presentation of infant formula and follow-on formula had changed following introduction of the new controls.
- iii. **Research project two – the effectiveness of the controls.** Specific research was commissioned to address elements (b) and (c) of the remit. This project investigated whether consumers were clear that follow-on formula advertising and presentation relates to formula for older babies and whether infants under six months were being given follow-on formula.
- iv. **Research project three – the purchase of follow-on formula.** The panel commissioned an analysis of loyalty card (Boots Advantage Card) data as a means of examining, albeit obliquely, whether infants under six months of age might be fed follow-on formula.

Commissioning the Research

38. On 11 July 2008 the panel met key stakeholders to benefit from their expert views on research that might be useful and how it could be conducted. The stakeholder meeting helped the panel’s subsequent work of agreeing the resulting research specifications (detailed in Annexes 4, 5 and 6).

39. The panel commissioned all three research projects according to the Food Standards Agency’s standard procurement procedures. Thus the call for research project one was advertised on the Food Standards Agency’s website, through the Food Standards Agency’s research e-newsletter, and was brought to the attention of organisations known to conduct work in this field. The specification for research project two was made available to relevant companies on the Central Office of Information (COI) roster and COI was made aware of academics likely to be able to collaborate on this work. For the third project the specification was made available to the three loyalty card schemes operating in the UK with access to data on follow-on formula purchases.

40. Two proposals were received in response to each of the specifications for research projects one and two and were appraised by both the panel and external appraisers. Proposals for research project one were appraised by Dr Brian Young from the University of Exeter's School of Psychology and for research project two, proposals were appraised by Dr Esther Dermott from Bristol University's Department of Sociology.
41. The panel invited all potential research contractors to present their proposals at its meeting on 11 September 2008 and answer questions. Based on the proposals submitted and the answers given at the meeting the panel agreed that the University of Leicester in collaboration with Billetts media monitoring and Site Reports should undertake research project one and GfK NOP Social Research in collaboration with the University of Kent should undertake research project two.
42. The panel also received and appraised two proposals for the loyalty card data analysis and agreed that Boots was best placed to meet the requirements of this research.
43. The review panel remained actively involved throughout the life of research projects one and two. For example the panel commented on and agreed materials used in the research, such as the coding frames used in research project one and the questionnaires in research project two. The panel and external appraisers, Dr Brian Young and Dr Esther Demott, also commented on the draft final reports.

The panel's approach to the use of evidence and information as a basis for its decisions

44. In addressing the specific terms of the remit, the panel sought and assessed a wide range of evidence and information, including the material submitted by key stakeholders, the findings of the two research projects and the analysis of data from Boots Advantage Card.
45. In determining what should be used, the panel concluded that its overriding concern was to consider the best available evidence – whatever the type and source – that helped to answer the questions set by the terms of the remit and that it should be robust and able to withstand scrutiny. Therefore, the panel did not impose an *a priori* hierarchy in its assessment of the various types and sources of evidence it considered.
46. Instead the panel recognised that, in practice, assessment required attention to the quality of the information and evidence. Consideration of quality includes attention to assumptions on which evidence is based and the limitations to which it is subject, as well as attention to the extent to which the source of information reflects vested interests in whatever topic is under scrutiny.
47. The type of evidence ranged from commissioned reviews of relevant academic literature to an analysis of the content of advertising of follow-on formula and infant formula and market research - including a survey and qualitative investigation - among parents, parents-to-be, carers and health professionals.

Reporting the panel's findings

48. The panel took a staged approach to preparing its final report. On 8 September a draft report was published on the Food Standards Agency website. On the same date key stakeholders were invited to comment on the accuracy with which the panel had represented in the report the material stakeholders had submitted. The panel is grateful to those stakeholders who responded to its invitations. The panel discussed comments at its final meeting on 29 October 2009 and agreed how they would be taken into account in the final report. Its response is published as document IFR-39 on the Food Standards Agency website^{††}. A copy of the draft report together with the full consultation responses have been deposited in the Food Standards Agency Library.
49. The consultation period also afforded the panel the opportunity both for additional reflection on the work thus far and for amending and refining the text - in a fashion that is usual in academic work. At its meeting in October 2009 the panel agreed on how it was going to finalise the report.
50. Having spent much time considering the review in the wider context of the promotion of breast feeding and the more specific issues surrounding infant and follow-on formula, the panel agreed this bigger picture should be reflected in the report, as is detailed in paragraphs 60-96 below. This provides the context within which the conclusions and recommendations should be read.
51. In considering all the available information and evidence, the panel noted a number of specific points which fell outside the review's objective and remit. However, the panel judged that these warranted special mention in its report. These are included in paragraphs 235 to 240 below.

^{††} <http://www.food.gov.uk/healthiereating/nutcomms/infformreview/>

Stakeholder contribution

52. From the outset the panel accepted the important role of key stakeholders, the different views they represent and expertise they bring. As such, key stakeholders have been involved and have been able to contribute throughout the life of the review.

Consultation on the remit and objective

53. Key stakeholders were involved in discussions on the objective and remit for the review. As discussed in paragraph 21 above, following the Minister's announcement that a review would be conducted, key stakeholders from a wide range of interested parties (including consumer organisations, public health groups, formula companies and LACORS) were invited to a meeting on 8 January 2008 with the Department of Health and the Food Standards Agency (DH and FSA, 2008b). At this meeting key stakeholders were asked to comment on the remit of the review, the expertise the panel carrying out the review should possess and the appropriate process for the review, including the role of key stakeholders. It was agreed that the independent panel carrying out the review should collectively have expertise in infant nutrition; consumer perception and behaviour; health inequalities and diversity; and marketing and understanding of the effect of promotion on consumer perception.
54. In April 2008 the Minister agreed the objective and remit of the review taking into account comments made at the meeting on 8 January 2008 (FSA, 2008a). Key stakeholders were informed of the objective and remit and were given an opportunity to comment on the specific membership of the panel. The responses to this consultation included, on the one hand comments from the Baby Feeding Law Group^{**} (BFLG) and National Childbirth Trust (NCT) calling for the remit to be broader, and on the other, comments from the Infant and Dietetic Foods Association (IDFA) who expressed concern lest the remit be widened. The Minister of State for Public Health was informed of these views. The review objective, remit and the membership of the panel were agreed by the Minister and the resulting panel held its first meeting on 5 June 2008.

Involvement in the review

55. As already noted the panel acknowledged the important role of key stakeholders in terms of providing information to help inform the review, and invited key stakeholders to submit material for the panel's consideration. The panel asked for material to be submitted on two occasions, once in June 2008 and again in February 2009, when specific follow-up questions in relation to the material previously submitted were also asked.
56. In addition to formally requesting material, the panel held a meeting with key stakeholders on 11 July 2008, to hear their views relating to the research it proposed to

^{**} The BFLG is a coalition of 22 health worker organisations and mother support groups, including NCT.

commission and to obtain a clear understanding of key stakeholders' suggestions as to the kinds of material that could benefit the panel's deliberations. The stakeholder meeting was useful and allowed the review panel to agree the resulting research specifications. Many of the points raised accorded with those of the review panel.

57. At the meeting on 11 July 2008, representatives of the infant formula and follow-on formula industry expressed concern that much of the material the review panel had requested was commercially sensitive and could not be put into the public domain. The panel were informed by the IDFA that the IDFA and its members have obligations under competition law which prevent commercially sensitive information from being shared. In response the panel suggested that, to maintain the openness of the review and the objectivity of the panel, the IDFA could meet with the secretariat to discuss what kind of material IDFA members might be willing to disclose and how this might be considered by the review panel in an open manner. This offer was not taken up.
58. Some material submitted was not directly relevant to answering the questions set out in the review remit. All the same the panel agreed that the information provided by key stakeholders should not only inform the panel's consideration of the questions posed in the remit, but also help provide the context for the review. Much of this information helped the panel draft the summary of the background of the review (detailed in paragraphs 60 to 96 below). In addition, and at the panel's request, the material submitted by key stakeholders was made available to the research teams commissioned to conduct research projects one and two, to help inform their understanding of the context of the research.

Comments on the accuracy of the draft final report

59. The panel is also grateful to key stakeholders for taking the time to consider its draft report and comment on the accuracy with which the panel had represented the material they had submitted (detailed in paragraph 48 above).

Summary of the background to the review

60. This section draws heavily on material submitted by key stakeholders throughout the review that was not directly relevant to answering the questions set out in the review's remit. Nevertheless, given the complexity of the topic and the panel's awareness of the context of the review, the panel agreed that this information helped illustrate the wider issues surrounding infant formula and follow-on formula's potential to impact on the broader breast feeding promotion agenda. Accordingly the panel agreed that the information should be reflected in this report.

UK breast feeding rates

61. The UK Department of Health is committed to the promotion of breast feeding, which is accepted as the best form of nutrition for infants to ensure a good start in life (DH and FSA 2008c). Breast feeding confers significant short-term and long-term health benefits to both mother and the baby.

62. On 12 May 2003, in England, following the World Health Organisation's (WHO) revised guidance, the Department of Health revised its recommendation on breast feeding, supported by a wide range of professional and voluntary bodies, including the Royal College of Midwives, the Community Practitioners and Health Visitors Association and the NCT. The Department of Health's recommendations on infant feeding are:

- Breast milk is the best form of nutrition for infants; it provides all the nutrients a baby needs;
- Exclusive breast feeding is recommended for the first six months of an infant's life;
- Six months is the recommended age for the introduction of solid foods for infants;
- Breast feeding (and/or breast milk substitutes, if used) should continue beyond the first six months along with appropriate types and amounts of solid foods;
- Mothers who do not follow these recommendations should be supported to optimise their infants' nutrition.

63. Some mothers do not breast feed and infant formula is used as an alternative to breast milk. However, unlike infant formula, which can be given from birth, follow-on formula is a product designed for older babies and should only be given to infants from six months of age. The Department of Health does not recommend the use of follow-on formula as there is no evidence that its use, over infant formula, benefits infants. Instead mothers who do not breast feed should feed their babies infant formula for the first twelve months (alongside the introduction of solid foods after six months) (DH and FSA 2008c).

64. In 2005 the rate of breast feeding initiation in the UK was 76 per cent; however, by six weeks the number of women exclusively breast feeding dropped to 21 per cent and by six months to less than one per cent. It is noted that 75 per cent of all mothers had given their

baby a milk, other than breast milk, by the age of six weeks. By the age of six months, the proportion rose to 92 per cent although this varied with social class (BMRB Social Research, 2005). Between 2007 and 2008 the value of the market for formula has risen by around 17 per cent and now stands at £242.9 million^{54§§}.

65. The Government is committed to encouraging breast feeding and to increasing the prevalence of breast feeding at age six to eight weeks through increasing breast feeding initiation rates and reducing drop off rates. As part of this commitment the Department of Health has promoted NHS take up of the UNICEF UK Baby Friendly Initiative (BFI) through its network of Regional Infant Feeding Coordinators, events such as the annual National Breastfeeding Awareness Week, and through provision of information on breast feeding. The BFI is a comprehensive package of measures and frontline staff training to achieve accreditation in meeting service standards, including encouraging maternity hospitals to implement the 10 steps to successful breast feeding and practice in accordance with the International Code of Marketing of Breast-milk Substitutes. The Department of Health has provided central funding of £7m to support 71 Primary Care Trusts across England in helping achieve BFI status in local hospitals and community settings. In addition the Department of Health is considering what further steps can be taken, to accelerate roll-out nationally (DH 2008, DH 2009a and DH 2009b).
66. As highlighted by the NCT the Department of Health's policies also take account of the National Institute for Health and Clinical Excellence's (NICE) report on improving the nutrition of pregnant and breast feeding mothers and children in low-income households. In this report, NICE recommendations include a multifaceted approach or coordinated programme of interventions across different settings to increase breast feeding rates. The report also makes recommendations in relation to information including action to ensure mothers have access to independent advice from qualified health professionals on the use of infant formula, including any risks and being shown how to make up a feed. The report recommends avoiding the promotion or advertising of infant or follow-on formula; it also recommends that healthcare professionals should not display, distribute or use product samples, leaflets, posters, charts, educational or other materials and equipment produced or donated by infant formula, bottle and teat manufacturers. This is in line with the requirements of the World Health Assembly (WHA) resolutions^{***} on potential conflicts of interests (WHA, 1996).

§§ IDFA states that these data are based on value rather than volume and that high increases in dairy commodity prices during 2008 may have been the key driver of the change recorded in the 2008 year.

*** WHA resolution 49.15 urges Member States to...“ensure that monitoring the application of the International Code and subsequent relevant resolutions is carried out in a transparent, independent manner, free from commercial influence;” (WHA, 1996) WHA resolution 58.32 urges Member States to ...“ensure that financial support and other incentives for programmes and health professionals working in infant and young-child health do not create conflicts of interest;” (WHA, 2005)

WHO International Code of Marketing of Breast-milk Substitutes

67. For several decades the way breast milk substitutes have been marketed has attracted attention and there has been particular concern that marketing (including advertising) of such products may have a negative effect on the initiation and/or duration of breast feeding. In 1974 the World Health Assembly (WHA) noted the general decline in breast feeding in many parts of the world related to socio-cultural and other factors including the promotion of breast milk substitutes (WHO, 1981).
 68. In 1981 concerns such as these led the WHO to adopt the International Code of Marketing of Breast-milk Substitutes. The international code aims “to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breast-feeding, and by ensuring the proper use of breast-milk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution” (WHO, 1981). The International Code applies to the marketing of breast milk substitutes, including infant formula; other milk products, foods and beverages, including bottle fed complementary foods, when marketed or otherwise represented to be suitable, with or without modification, for use as a partial or total replacement for breast milk; feeding bottles and teats.
 69. Follow-on formula was not specifically mentioned in the International Code as it was not available in 1981. However, in 1986, the WHA, which dealt with infant and young child feeding, stated that the “practice being introduced in some countries of providing infants with specially formulated milks (so called ‘Follow-up milks’) is not necessary”(WHA, 1986).
 70. The BFLG made the review panel aware of research from the United States^{26,27,28}, including one review of existing research, which reports that the marketing of formula can affect breast feeding rates and/or duration. The BFLG also highlighted to the review panel an opinion from the Institute of Advertising Practitioners in Ireland, that the advertising of follow-on milk, namely Cow and Gate Step-up, increased both its brand share and contributed to growth in the total formula market¹. In addition, the BFLG highlighted the marketing strategies used by the baby milk industry in the UK in 2006⁶, which BFLG consider undermine breast feeding.
 71. The panel noted that the UK Government supports the principles of the International Code and the relevant WHA resolutions. These are reflected in Department of Health policy and in the European Directive on infant formulae and follow-on formulae and implementing UK legislation (DH and FSA, 2008c). However the review panel noted that there are calls for the UK to go further and fully implement the International Code. The BFLG drew the panel’s attention to the 49th session of the United Nation’s Committee on the Rights of the Child recommendation that the State implement fully the International Code of Marketing of Breast-milk Substitutes^{38,42}.
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Advertising

72. The International Code, among other things, states that there “should be no advertising or other forms of promotion to the general public” (WHO, 1981). In 1995, the Infant Formula and Follow-on Formula Regulations 1995 were introduced to implement Directive 91/321/EEC on infant formulae and follow-on formulae. These Regulations prohibited advertising of infant formula for the first time. As an exception, the 1995 Regulations only permitted advertisements “in a publication specialising in baby care and distributed only through the health care system; in a scientific publication; or for the purposes of trade prior to the retail stage” (The Infant Formula and Follow-on Formula Regulations, 1995).
73. However, there continue to be concerns about the way infant formula is advertised, including the view that even the restricted advertising of infant formula allowed in scientific publications, may undermine breast feeding. To address these concerns Unite, the trade union with healthcare professional members, has developed specific criteria and guidance for advertisements placed in “Community Practitioner” magazine²⁰. Similarly the Royal College of Midwives informed the panel that for its magazine “Midwives” advertisers must meet certain criteria and from 2010 the publication would no longer accept advertisements for formula milk⁴⁹.
74. The 1995 Regulations did not impose the same restrictions on follow-on formula advertising as on infant formula advertising. This led to concerns, one of which was that the promotion and advertising of follow-on formula contributes to undermining breast feeding as the normal way to feed an infant and also that follow-on formula was being advertised in a way that caused confusion with infant formula. This was seen by some as getting round the prohibition on the advertising of infant formula to the general public and encouraging parents to use follow-on formula rather than breast feeding or using infant formula for infants aged under six months⁷. Therefore, when in 2004, the European Commission issued a draft proposal for a recast Directive on infant formulae and follow-on formulae, the BFLG called for a ban on the promotion of follow-on formula^{4,7}.
75. In 2005 the Department of Health commissioned NOP World to carry out a survey of pregnant women and those mothers with a child under one year of age to explore their perceptions and understanding of infant formula and follow-on formula (Department of Health, 2005). The outcome of that survey showed that 67 per cent of the women surveyed had seen advertising of formula on television and in magazines. Of these about 39 per cent stated this was infant formula advertising, which is prohibited, and around the same number –38 per cent said it was advertising for follow-on formula. The Department of Health’s 2005 Infant Feeding Survey found that not all mothers understood the difference between infant formula and follow-on formula and 11 per cent of mothers reported giving babies under six months of age follow-on formula (BMRB Social Research, 2005). In addition the NCT and UNICEF commissioned MORI to carry out similar research that showed that 60 per cent of the sample reported having seen infant formula advertising (NCT/UNICEF, 2005). The BFLG also provided details of research

from Canada and Austria, which suggests that some infants under six months are being fed follow-on formula^{24,25} in those countries.

76. In contrast members of the infant and follow-on formula industry take the view that there is no evidence to show that consumers are confused between infant formula and follow-on formula (FSA, 2007b) and that advertisements are clear that they are for follow-on formula and would not be confused with infant formula²³.

European Directive 2006/141/EC

77. Following the adoption of Directive 91/321/EEC, the BFLG continued to put pressure on the European Commission to implement the International Code. The Department of Health also made a commitment in the 2004 White Paper “*Choosing Health*” to continue to press for further restrictions on the advertising of formula milks during negotiations on the revised European Commission Directive (Department of Health, 2004).

78. In 2004 the European Commission issued a draft proposal for a recast Directive on infant formulae and follow-on formulae in order to bring the compositional standards for infant and follow-on formula in line with new advice from the Scientific Committee on Food and to reflect discussions at an international level in the Codex Alimentarius forum. During the discussions to change the compositional standards the UK, supported by Finland²⁹ raised the specific concern that advertising of follow-on formula risked confusion with infant formula and thus risked undermining breast feeding. The UK was successful in getting this discussed and as a result Article 13 was inserted which put in place new provisions requiring the labelling, presentation and advertising of such products to avoid any risk of consumer confusion (detailed in paragraph 15 above) (EC, 2006).

79. The final text of Directive 2006/141/EC on infant formulae and follow-on formulae was adopted on 28 July 2006 and published on 30 December 2006 (EC, 2006).

UK Regulations 2007

80. In July 2007 the Food Standards Agency consulted on the draft Infant Formula and Follow-on Formula Regulations 2007, which implement Directive 2006/141/EC into UK law (FSA, 2007c). During the consultation interested parties continued to raise concerns that the new controls were not sufficient to address their concerns on follow-on formula advertising and called for the legislation to go further and ban all commercial promotion of follow-on formula. The panel notes that the UK Government considered this in relation to European law, which prevents Member States going beyond the scope of harmonised European legislation, and felt it did not have grounds to go beyond Directive 2006/141/EC. BFLG maintain that the advertising of follow-on formula to the public should be banned and has cited implementing legislation in Luxembourg⁵⁷ which the BFLG argue bans the promotion of follow-on formula^{†††}. The panel notes this and also

††† The panel noted that the Food Standards Agency had been informally told by the British embassy in Luxembourg that the legislation is currently incompatible with the European Directive and would be brought into line with it. The panel notes that, at the time of writing, there had been no change to the legislation in Luxembourg.

notes that the European Commission stated that “where the Directive did not expressly permit it, Member States are not allowed to adopt national provisions” (Madelin R, 2007). This provides background to the panel’s consideration of the new measures.

81. In November 2007, Dawn Primarolo, the then Minister of State for Public Health, announced the new 2007 Regulations and also launched a consultation on accompanying guidance notes to set out how to apply the new provisions. At the same time she made a commitment to reviewing the effect of the 2007 Regulations and associated guidance notes (FSA, 2007a).
82. The Infant Formula and Follow-on Formula (England) Regulations (2007) were made on 13 December 2007 and came into force early in 2008. Equivalent parallel Regulations were also made in Scotland, Wales and Northern Ireland. In September 2008 The Regulations were amended by The Infant Formula and Follow-on Formula (England) (Amendment) Regulations 2008. These Regulations amended the transitional periods to bring them into line with the judgment from a judicial review undertaken earlier that year. Parallel amending Regulations were also made in Scotland, Wales and Northern Ireland. Throughout this report the English, Scottish, Welsh and Northern Irish Regulations and amending Regulations are collectively referred to as “the 2007 Regulations”.
83. The Food Standards Agency has issued guidance to accompany the 2007 Regulations (FSA, 2008b) to help industry, enforcement officers and other interested parties interpret the provisions put in place by the 2007 Regulations. The guidance notes help explain what the law requires and provides recommendations on best practice. Included as Appendix 1 to the guidance is interpretation of the term “advertising” within the scope of the 2007 Regulations, to which the review panel was referred at its first meeting (detailed in paragraph 23 above) (DH and FSA 2008c).
84. Although the new provision relating to consumer confusion applies to the labelling, presentation and advertising of infant and follow-on formula, Directive 2006/141/EC and the 2007 Regulations put in place certain transitional periods. These transitional periods allow products that are labelled and presented (in so far as it relates to the shape, appearance and packing of the product) in compliance with the 1995 Regulations, to continue until 1 January 2010 (FSA, 2008b). The provisions relating to the advertising of infant formula and follow-on formula and presentation (in so far as it relates to the way in which infant formula and follow-on formula are arranged and the setting in which they are displayed) came into force early in 2008.

The wider context of the review

85. The objective and remit of the review presented to the panel took into account the Minister’s commitment to review the new controls, and assess whether these were working as expected, the discussions with key stakeholders (detailed in paragraphs 53 and 54 above), as well as taking into account the transitional periods in the 2007 Regulations. The review’s objective and remit were to make evidence based recommendations that could be used to inform policy and any further consideration of

whether the new controls relating to avoiding confusion were sufficient to address concerns lest follow-on formula advertising might also advertise infant formula (DH and FSA 2008a).

86. The Minster carefully considered both the review's objective and remit so that they would enable the review panel to draw useful and clear conclusions within the timescale available, and to make evidence-based recommendations as to what future action may be necessary. However, the review panel is conscious that the issue of consumer confusion surrounding advertising is not the only concern expressed by stakeholders in relation to infant formula and follow-on formula. The panel is aware that any recommendations resulting from the review would need to operate within this broader context. Some of these wider issues are set out in the following paragraphs.
87. Baby Milk Action (BMA) has complained to the European Ombudsman about the Commission's administration leading to the agreement of Directive 2006/141/EC on infant formulae and follow-on formulae. BMA feels that the Commission's administration resulted in Member States failing to take appropriate action to protect public health. At the time of writing, this issue was awaiting a decision from the European Ombudsman^{35,36}.
88. BMA and BFLG continue to be concerned that advertising or promoting a brand name associated with an infant formula, in turn advertises the infant formula, which may have a negative effect on breast feeding rates^{15,16,17,48}. The BFLG provided specific examples of brand advertising to the Food Standards Agency and enforcement authorities through its quarterly monitoring reports and these have been considered by the panel along with all other information submitted by key stakeholders^{15,16}.
89. The BFLG is also concerned about the sponsorship or ownership of health facilities and services or the funding of educational materials by businesses, which they feel may promote products and lead to bias. In 2006 this issue was raised with the Secretary of State for Health, in relation to the Health Bill^{5,32} and with the Secretary of State for Education and Skills, in relation to the education white paper, "Implications of Business Sponsorship on Infant and Young Child Health"³¹. More recently it has been raised with the Department of Children, Schools and Families (DCSF) in response to their call for evidence to assess the impact of the commercial world on children's wellbeing^{39,40}. In response to both of these documents BMA raised concerns that business sponsorship is a means of marketing products or is a means of introducing industry public relations. In opposition to this they referred to the right to protection from economic exploitation contained in Articles 32 and 36 of the Convention of the Rights of the Child (Committee on the rights of the child, 1989). In addition the International Baby Food Action Network is active in discussions at a European level about the use of Public Private Partnerships (PPPs)⁴³, including the management of conflicts of interest and PPPs' lack of accountability.
90. The NCT are concerned that company carelines advertise the brand name, which in turn promotes the associated infant formula. The NCT also expresses concerns about whether

the information given through carelines is in compliance with the 2007 Regulations¹¹ and feels that it is inappropriate for manufacturers to be a source of advice about infant feeding to carers. BMA on behalf of the BFLG has similar concerns, in particular that pregnant women are encouraged to sign up to receive company information^{15,16,48}. In contrast one follow-on formula manufacturer⁵⁵ took the view that advertisements for carelines, which do not make reference to a product, are not advertisements for products. The IDFA has provided the panel with details of the calls and questions asked through company carelines⁵⁴.

91. The NCT and BMA on behalf of the BFLG consider the labelling of infant formula and follow-on formula is unclear and believes that the information provided on preparation confuses parents and carers^{15,16}. As such, the NCT has been active in calling for formula companies to provide information on making up their products that is in line with Food Standards Agency guidance¹².
92. The BFLG is particularly critical of the nutrition and health claims made by infant and follow-on formula companies on labels, as they consider such claims on foods and drinks for infants and young children should not be permitted on the grounds that these are misleading, highly promotional and undermine breast feeding. The BFLG has “called for any permitted claims to be placed at the back of packages in non-promotional text” (DH and FSA, 2010a). The Infant Formula and Follow-on Formula Regulations 1995 and now the 2007 Regulations control the use of nutrition and health claims on infant formula. These Regulations have a positive list of nutrition and health claims that can be made on infant formula.
93. As well as concerns about the claims made in the labelling of infant formula there are also concerns about the claims made in the advertising of infant formula in scientific publications aimed at healthcare professional readership, for example as reported by Buckinghamshire Trading Standards⁵².
94. The panel is aware that the use of nutrition and health claims on follow-on formula is controlled by Regulation 1924/2006 on nutrition and health claims made on food. This Regulation puts in place a process for the authorisation of claims at a European level, with a scientific assessment by the European Food Safety Authority (EFSA) and ultimately the formulation of a positive list of claims. Claims made on products specifically for infants and young children, including follow-on formula, have to go through a more specific assessment process than claims made on normal foods. However BFLG members question the overall process, the level of scientific assessment, the openness of EFSA’s processes⁵⁷, and fundamentally whether it is appropriate for follow-on formula to carry health claims^{41,57}.
95. The panel notes that BMA and members of BFLG are also active in highlighting what they consider to be breaches of the 2007 Regulations to enforcement officers, the Food Standards Agency and the Advertising Standards Authority^{15,16,44,45,48} and continues to press enforcement authorities to take action where there are perceived breaches.

96. The International Code on Marketing of Breast-milk Substitutes states that “Non Governmental Organisations (NGOs), professional groups, institutions and individuals concerned should have the responsibility of drawing the attention of manufacturers or distributors to actions which are incompatible with the principles and aim of this Code, so appropriate action can be taken. The appropriate government authority should also be informed.”. (WHO, 1981). The panel notes that BMA, members of BFLG and other NGOs have an important role to play not only in raising the above points with government and enforcement authorities, but also drawing attention to other matters associated with infant formula and follow-on formula^{34,37}.

Material submitted by key stakeholders

97. As detailed in paragraphs 44 to 47 above, the panel concluded that its overriding concern in determining the use of material submitted was to consider the best available evidence that helped to answer the questions set by the terms of the remit.
98. The panel considered each item of material supplied by key stakeholders in relation to the remit of the review. At least two panel members considered each item and the chair considered all the material submitted. The material was grouped according to whether it (1) contributed to establishing the historical context and helped the review panel understand the views of those with an interest in the review; or (2) directly helped the panel address the tasks set out in the remit.
99. A summary of key stakeholders' documents that helped the panel address the tasks set out in the remit is provided below. Some of the documents submitted, particularly those provided by the NCT and BMA on behalf of the BFLG, were extensive and, as a result, not all of the details provided have been specifically referenced below. In some cases the examples cited below were brought to the panel's attention by several stakeholders and not all have been mentioned in each case. Copies of all the information submitted by key stakeholders have been deposited in the Food Standards Agency Library.
100. At the panel's request, the material submitted by key stakeholders was also made available to the research teams conducting research projects one and two in order to inform their understanding of the context of the research.

Remit point (a): Establish the effect of the new controls on the ways in which infant formula and follow-on formula are presented and advertised.

101. Key stakeholders provided the panel with numerous examples of advertisements for infant formula and follow-on formula and various examples of in-store presentation of these products from 2006 and between 2008 and 2009^{10,11,15,16,45}. The advertisements sampled for the systematic analysis of advertising content from these two periods carried out by the University of Leicester research team included the advertisements highlighted by key stakeholders. The panel used the results of this research to inform its consideration of this element of its remit.

Remit point (b): Establish whether consumers are clear that presentation of, and advertising of, follow-on formula relates to formula for older babies and not to infant formula.

102. The panel recognised that both the LACORS and BMA on behalf of BFLG highlighted concerns relating to brand advertising^{8,15,16,48}. In particular LACORS stated⁵¹ the opinion: [we take] "the view that alignment of brand names and company names and logos blurs the distinction between infant formula and follow-on formula to the extent that consumers are unable to distinguish between them. Consumers 'read across' and whilst the manufacturers indicate that they are advertising / promoting follow-on formula the

consumer sees this as applying to infant formula as well.” This view is shared by the BMA on behalf of BFLG who supplied monitoring reports^{15,16} that included specific examples, such as those on pages 4 and 5 of the document entitled “UK formula marketing practices” March 2009.⁴⁸

103. LACORS said that it “supports the view that the same advertising, marketing and promotional controls which currently apply to infant formula should also apply to follow-on formula. These extended controls should be framed in such a way so as to cover generic manufacturer names, logos and other pictorial devices in the same manner as those which currently apply to specific individual product names or logos where the likelihood of consumer “read-across” mentioned above will occur”⁵¹.

104. In relation to potential confusion between infant formula and follow-on formula, the NCT commented about the way infant formulas and follow-on formulas are presented (arranged on the shelf in-store). It commented that none of the supermarkets or pharmacies [visited by its members] separated infant formula and follow-on formula and that “even in large stores they are jumbled up together”¹¹.

105. NCT also cited an example of an advertisement for Cow & Gate Complete Care [range] in the British Journal of Midwifery and in Community Practitioner, February 2009, which the NCT claims is unclear whether it is for infant formula or follow-on formula⁵⁰, it is noted that this appeared in a health professional journal in which the advertising of infant formula is permitted.

106. Various stakeholders provided examples of follow-on formula advertisements from parenting magazines where they felt it was unclear that the product advertised was follow-on formula. The “Nurture” follow-on formula advertisement in Mother & Baby magazine in April 2009 was cited by stakeholders because, they contend, it focuses on ingredients common to both infant formula and follow-on formula⁵⁰.

107. NCT¹¹ and others also drew the panel’s attention to the SMA TV advert, viewed on ITV2, on 2nd August 2008, which they felt did not make it clear that the product advertised is follow-on formula and suitable only for use for infants from six months of age. The NCT stated “The images relate to a baby that could be a few weeks old. For instance the playmate with hanging toy is appropriate for small babies....the way the mother is holding the baby, the father’s voice, promising... to do night feeds, that are more appropriate to a younger baby, the presence of the mother-in law, the use of a bottle, etc. There is nothing that implies it is a baby older than six months.”¹¹

Remit point (c): Establish if infants under six months of age are being fed follow-on formula and if so the reasons why.

108. The British Dietetic Association (BDA) stated its view that: “Advertising of follow-on formula persuades parents that follow-on formula is a necessary stage in infant feeding and many parents are now using it from six months of age or earlier. Some use it before their baby is six months old because it is cheaper than infant formula and some use it believing it to be more satisfying and may help the infant sleep through the night.”¹⁹

109. The panel also considered the report published by the Caroline Walker Trust (“I hear it’s closest to breast milk”),⁴⁶ on the discussions of parents and parents-to-be around formula and formula feeding on web discussion sites. It should be noted that the report does not claim that its findings are representative of behaviour of the parents of all young children. However, in the summary, the report states that web discussion sites are used as supportive advisory sources and in general users seemed happy to consider advice from one another regardless of expertise. The report states that the main drivers for discussions were related to normality, with users eager to find solutions to what they perceive to be problems. In doing so the report states that they show a high awareness of formula products, formula feeding practices and formula brands. The report also states in relation to follow-on formula that “There was no real evidence that they were being used or discussed by parents of babies much younger than six months.”⁴⁶

Remit point (d): Identify any enforcement issues which have arisen since the new controls came into force – material supplied by enforcement authorities

110. Both LACORS and the Advertising Standards Authority (ASA) provided general comments on enforcement issues as outlined below:

111. LACORS requested and receive quarterly reports from BMA on behalf of the BFLG, which collect and collate the vast majority of complaints that come from its members and members of the public. These reports were submitted to the panel^{15,16,45}. LACORS also stated, but did not provide further details, that: “Aside from the BFLG reports the local authorities with responsibility for the major UK manufacturers have received around 10 complaints during the past 12 months”²¹ (taken to mean between October 2007 and September 2008). The panel notes that the BFLG^{†††} quarterly monitoring reports collate complaints made by many of its members.

112. The panel also noted ASA’s statement in its response that in the two years up to September 2008 368 complaints about 56 advertisements for follow-on formula had been received. To put this into context the ASA made clear that in 2007 a total of over 24,000 complaints were received about more than 14,000 advertisements. However, around two thirds of the complaints about follow-on formula advertisements were not found to breach the advertising codes and thus, the ASA did not investigate. Of the remaining 20 advertisements: three complaints were withdrawn, nine were outside the ASA’s remit, (as at September 2008) five were under investigation, two were investigated but not upheld, one was upheld²².

113. In summary the ASA stated that common complaints about follow-on formula advertisements related to the indirect promotion of infant formula, the building of general brand awareness and loyalty, the denigration of breast feeding and the exaggeration and distortion of the health and nutritional benefits of formula products²².

††† The BFLG is a coalition of 22 health worker organisations and mother support groups, including NCT.

114. Up to September 2008 the ASA had received one complaint about an infant formula advert in a booklet in a direct marketing information pack sent to a member of the public. The ASA referred the advert to Trading Standards²².

115. Between 1 September 2008 and 7 April 2009 the ASA received 26 complaints about follow-on formula advertisements. Of these seven were complaints relating to two advertisements (six complaints against an SMA advertisement and one complaint against a Cow & Gate advertisement)⁵³ for follow-on formula, which complainants felt did not make clear they were an advertisement for follow-on formula and not infant formula.

116. ASA made the following comments: “follow-on formula advertisers have a good record of compliance with the Advertising Codes. Therefore, no compliance surveys have been conducted amongst this sector. As well as conducting compliance surveys, the ASA also conducts daily monitoring of ads in magazines and newspapers, as well as all television channels, including shopping channels, which cannot be pre-cleared by Clearcast. The Compliance and Monitoring teams have not encountered any problems with infant and follow-on formula ads through their daily monitoring work.”²²

117. In response to the panel’s questions “Are the 2007 Regulations clear and does this have an impact on your ability to take action? Has this situation changed since the introduction of the 2007 Regulations?”, LACORS and ASA made the following comments.

118. LACORS responded with the following comments:

- i. the Regulations implement Directive 2006/141 which itself is unclear since key terms e.g. “advertise”, “advertising”, “advertisement”, “promotion”, “promote”, “idealise” are not defined precisely enough to provide Trading Standards Officers with legal certainty in application⁵¹.
- ii. The position of websites is also very unclear from a legal point of view. Certain websites contain information which would be prohibited if it was on a label or in an advertisement⁵¹.
- iii. Certain claims (e.g. “gentle”, “easy to digest”, “softer stools”) can be subjective in nature and it is difficult to draw the line between prohibited compositional claims, prohibited health claims and acceptable factual statements²¹.
- iv. One of the major problems for enforcement officers is the use of advertising and promotional material which blurs the distinction between follow-on formula and infant formula. This is the case both in relation to the use of generic company logos and the use of infant imagery where it is difficult to determine the age of the infant. For example: the SMA logo (used in relation to both infant formula and follow-on formula) is closely associated by many consumers with infant formula and the stylised “M” pictorial can be closely associated with a breast feeding mother²¹.

- v. A further complicating factor is the inclusion of the word “uniquely” in Section 67 of the Food Standards Agency guidance notes which states that “any general advertisement placed by a manufacturer must not feature a brand name, trade mark, business name or logo uniquely associated with an infant formula...”(FSA, 2008). It is difficult to argue that generic names such as “Cow & Gate” and “Aptamil” are uniquely associated with an infant formula as they could be used in relation to a range of other products²¹.

119. ASA responded with the following comments:

- i. Overall, ASA finds the Regulations clear and is content that they do not impact on its ability to take action against infant formula or follow-on formula advertisements which fall within its remit. Broadly speaking this situation has not changed since the 2007 Regulations came into force⁵³.
- ii. Where ASA has encountered difficulties it has been with the Food Standards Agency guidance notes rather than with the Regulations. In ASA’s experience, detailed and prescriptive guidance to legislation can prolong the investigation process particularly if there is a need to consult lawyers about interpretation of specific guidance notes⁵³.
- iii. Difficulties may also arise if the guidance goes beyond what is required by the Regulations or if an advert uses a creative treatment that could be in breach of a specific example used in the guidance but the overall effect of the ad seems compliant with the Regulations⁵³.
- iv. The ASA believes that overarching, principles-based guidance is generally more flexible and adaptable to changes in advertising trends and technologies than a prescriptive approach⁵³.

Remit point (d): Identify any enforcement issues which have arisen since the new controls came into force – material submitted by other key stakeholders

120. The NCT^{10,11,50} and BMA on behalf of BFLG^{15,16,45} highlighted the use of nutrition and health claims, which in their view are not permitted by the Regulations, citing the following examples.

- i. An advert for Aptamil infant formula, carried in the British Journal of Midwifery in June 2008, includes a health claim (relating to “prebiotics”) not permitted according to the Directive and the 2007 Regulations. Other advertisements include other such claims e.g. “easy to digest”. In addition, research cited does not provide sufficient evidence to support the use of these claims¹⁰.
- ii. An advert for Heinz Nurture carried in healthcare professional journals includes health claims not permitted according to Directive 2006/141/EC and the 2007 Regulations¹⁰.

- iii. An Aptamil TV advert, viewed in 2008, makes a health claim (“clinically proven to support baby’s immune system”) which is not substantiated by the evidence¹¹.
- iv. Cow & Gate Good Night Milk follow-on formula: advertising includes various unsubstantiated claims¹¹.
- v. A data sheet for Aptamil Easy Digest infant formula similarly carries non-permitted health claims not supported by the evidence cited¹⁰.

121. The BMA on behalf of BFLG members and the NCT considered the following to be examples of promotion of infant formula directly to members of the general public, which is not permitted by the Regulations:

- i. Company websites include advertisements for infant formula in sections available to the general public¹¹.
- ii. An NCT member is reported as stating: “I registered for the SMA baby club... As a pregnant mum I received a calendar to take me through my pregnancy including information about SMA gold and white (infant formulas).”¹¹
- iii. A weight conversion chart produced by Aptamil advertises infant formula to healthcare professionals but is likely to be used in front of carers and thereby could advertise infant formula too¹⁰.
- iv. Use of a logo or brand name [belonging to follow-on formula and infant formula] in an advertisement for follow-on formula has the same effect as advertising the whole range of formula products [to the general public], including infant formulas⁵⁰.
- v. There is the same concern in relation to general advertising material e.g. Aptamil flyer encouraging carers to join its baby club⁴⁸.

122. The BMA on behalf of BFLG members and the NCT also highlighted what they considered to be promotion of infant formula sales through price reduction, a practice not permitted by the 2007 Regulations, providing as examples:

- i. NCT provided an [undated] example (photograph) of an online sales site, advertising Cow & Gate infant formula at a price reduction¹¹.
- ii. BMA on behalf of BFLG provided an example (photograph) of a supermarket (Co-op, Aberystwyth, 30 May 2008) reducing the price of a pack of infant formula¹⁶.
- iii. Promotion of infant formula sales through special displays e.g. shelf talkers, gifts⁴⁸.

- iv. NCT provided [undated] photographic examples of where shelf talkers promoting follow-on formula (by brand name or price reduction) were placed very close to infant formulas⁵⁰.
 - v. NCT provided an example of an infant formula company careline (advertised in parenting magazines in 2008) that offered a gift (cuddly toy) upon joining¹¹.
123. The August 2008¹⁶ and March 2009⁴⁸ reports on UK formula marketing practices from BMA, on behalf of BFLG set out examples of practices BMA believes are contrary to the 2007 Regulations. Some examples of the complaints to enforcement authorities and the responses they received to those complaints are provided below:
- i. BMA complained about a flyer found in a clinic in May 2008. BMA claims it targets pregnant women with the [infant formula] brand name and encourages them to visit the SMA website where all formulas are advertised. BMA reports the enforcement officer's response as: "A leaflet encouraging women to contact the SMA Baby Club is not in breach of the Regulations. The supply of informational and educational materials (in response to such a leaflet) is permitted so long as the material meets the conditions listed in the [2007] Regulations."⁴⁸
 - ii. BMA complained about an advertising feature in Prima Baby magazine, September 2008⁴⁸. It promotes the SMA site where all formulas are advertised. BMA reports the enforcement officer's response as: "This enforcement agency would like to see websites controlled by [the 2007] Regulations. However, it seems that manufacturers will not accept that websites are advertisements unless the point is established via a successful prosecution."⁴⁸
 - iii. BMA complained about a video distributed to health workers despite Nestlé's failing to gain required approval in 2005. The Home Authority has confirmed that Nestlé tried and failed to gain approval in 2005 and has asked it to try again¹⁶.
 - iv. BMA complained about Heinz Nurture "NEW" shelf talkers which picture the follow-on formula but are placed near Nurture infant formula (in Boots, Chelmsford 24 August 2008). The Home Authority advised Heinz this is contrary to guidance note 53. Heinz claimed to have no control over practices of retailers.⁴⁸
 - v. BMA complained about a Heinz Nurture infant formula advert in Community Practitioner magazine (August 2008) carrying a health claim not permitted under the Directive and the 2007 Regulations. Trading Standards advised Heinz that the health claim was not permitted. Heinz maintains it is compliant [with the 2007 Regulations].⁴⁸
 - vi. BMA provides an example of a supermarket (Co-op, Aberystwyth, 30 May 2008) reducing the price of a pack of infant formula; this contravenes the 2007 Regulations. BMA says "Local action may have been taken in this case, but the problem is widespread."¹⁶

- vii. In 2009, BMA summed up its view as “The responses from the authorities... show that enforcement officers feel there is little they can do. They suggest promotions are outside the scope of the law or test cases are needed to define the law, but nobody appears to be willing to bring them. The Guidance Notes, presented by the Government as addressing some of the issues covered by the law, are seen as unenforceable because they go beyond the law.”⁴⁸

Research project one – nature of advertising and presentation

124. Point (a) of the remit asked the panel to *establish the effect of the new controls on the ways in which infant formula and follow-on formula are presented and advertised*. It was agreed that to answer this question a specific research project should be commissioned to provide an accurate representation of infant formula and follow-on formula advertising and presentation before and after the new controls were introduced. In addition this project analysed the content of such advertising and the nature of presentation to establish if these had changed following introduction of the new controls (University of Leicester, 2009). A copy of the specification for this research project can be found at Annex 4.

125. The objectives of the research were:

Objective one: To provide an accurate representation of infant formula and follow-on formula advertising and presentation before and after the new controls were introduced.

Objective two: To analyse the content of such advertising and the nature of presentation to establish if these changed following the introduction of the new controls.

126. As explained in paragraphs 40 and 41 above, having considered the proposals put forward the panel agreed that the University of Leicester in collaboration with Billetts media monitoring and Site Reports were best placed to meet the requirements of the project.

127. The research comprised three parts:

- i. Review of relevant consumer literature on advertising impact and effects to identify coding variables for advertisement coding frames^{§§§} that are known to mediate consumers' reactions or responses to advertising
- ii. Location of formula product advertisements in whichever media they occurred over two pre-defined time periods
- iii. Design and implementation of a coding system to describe the representation and nature of formula advertising

128. The literature review provided both a context for the research and also informed its direction and design. This was carried out by academics at the University of Leicester, who also developed and implemented the coding frame using the findings of the literature review. Billetts media monitoring provided access to advertising in television, radio, cinema, print media, new media and direct mail. The search for outdoor and point of sale advertising was carried out by Site Reports.

^{§§§} The coding frames provided a system for recoding and describing the content and nature of advertising.

129. The research considered a “before” and an “after” period in order to make an assessment of any changes. The “before” period ran from January 2006 to the end of December 2006, to take account of Directive 2006/141/EC being published in December 2006. The “after” period ran from March 2008 to February 2009.

Findings

130. It was agreed that the range of advertising media to be considered should be as broad as possible. The research considered advertising in: TV; radio; print media including magazines and newspapers and scientific publications; cinema commercials; outdoor posters and other advertising materials in public places, including moving images, e.g., in hospitals; new media including the internet and websites; direct mail and in-store advertising including on shelf and off shelf stand alone displays. However follow-on formula advertisements were found in four of these media: print, television, direct mail and internet (University of Leicester, 2009).

131. The research provided a great deal of detail about the nature of infant formula and follow-on formula advertising, how this differed between 2006 and 2008/2009, how it differed between media and between different brands. The summary of the findings provided below attempts to highlight the key findings that are relevant, not only to the objectives of the research, but also to the overarching objective of the review i.e. to assess whether the new controls have been effective in making it clear to parents, parents-to-be and carers that advertisements for follow-on formula are meant only for babies over six months and are not perceived or confused as infant formula advertising, which is prohibited.

132. The research was asked to address specific questions which would allow the panel to answer point (a) of the remit, and has in turn provided specific findings. The extent to which these findings can be interpreted is limited to addressing the remit: how presentation and the content of advertising have changed and not how this advertising is then viewed and understood. The interpretation of the findings cannot readily be extended to include the impact of advertising during the two time periods, nor whether there were any changes in impact. This is because of both the nature of the information provided and the range of factors which influence how advertising is viewed: this would apply to all advertising, not just follow-on formula. For example the research findings present the number of advertisements sampled for each time period: this allows for an assessment of how the advertising has changed between 2006 and 2008/2009. Indication of impact of these changes would require further more extensive study of other complex influences known to affect impact that were not measured in this research. For example in the case of television advertising and sponsorship the impact of this will depend on many influences, such as the size of the audience to which it is shown, how involved that particular audience is with product being advertised (this can be dependent on the adjacent programs), whether it is a sponsorship slot (usually a short credit shown at the beginning and end of a programme) or a commercial advertisement (shown within a commercial break). As no other influences have been looked at in this research, or as part

of the review, extreme caution should be applied when interpreting the results in any way other than as a change.

133. It is also not possible to say what, if any, effects the changes in the content of the advertising observed over the two time periods, will have had on those viewing the advertising. Although the research looked at specific factors known to have an effect on the memory for advertisements, memory for brand, attitude to advertisements, attitude to brand, intention to purchase, readability and physiological responses, it did not look at these factors in combination. This is true of the literature, where the effect of advertisements as a whole is generally not assessed. It is therefore not possible to draw conclusions about how an advert as a whole would be viewed.

134. The specific differences highlighted below show the key changes between the advertising in 2006 and 2008/2009. Although these represent changes, it is not possible to attribute them to the introduction of the 2007 Regulations.

Objective one: To provide an accurate representation of infant formula and follow-on formula advertising and presentation before and after the new controls were introduced.

135. Bearing in mind the observations in paragraph 138 below, key differences in the number of advertisements and the media used are outlined below:

- i. There were more follow-on formula print advertisements in the 2008/2009 sample (33 advertisements) than in the 2006 sample (16 advertisements).
- ii. There were more follow-on formula television advertisements/sponsorship slots^{****} in the 2006 sample (22 advertisements) than in the 2008/2009 sample (7 advertisements). However, it should be noted that in 2006 most were sponsorship slots (19 advertisements, 86% of television advertisements from 2006) compared to 2008/2009 (1 advert, 14% of television advertisements from 2008/2009) when most were commercial advertising (6 advertisements, 86% of television advertisements from 2008/2009)
- iii. The research discovered very little follow-on formula advertising via the internet^{††††} and few direct mail advertisements (3 advertisements, 4% of all advertising identified). Where this did occur, it was all in 2008/2009, with no internet or direct mail advertising identified in 2006.
- iv. No follow-on formula advertising was identified on the radio, in cinemas, as outdoor posters or in-store.
- v. A larger sample of infant formula advertising, which is only permitted in scientific publications and for the purposes of trade prior to the retail stage, was found in 2008/2009 (21 advertisements) than in 2006 (9 advertisements).

^{****} A sponsorship slot is usually a short credit shown at the beginning and end of a programme. A commercial advertisement is shown within a commercial break. Advertising/advertisements in the report refers to both.

^{††††} This is based on paid-for space only.

Objective two: To analyse the content of such advertising and the nature of presentation to establish if these changed following the introduction of the new controls.

136. Key differences in the nature of follow-on formula print advertising are outlined below:

- i. Advertisements in 2008/2009 (average surface area 1809 cm²) were almost twice the size of advertisements from 2006 (average surface area 940 cm²).
- ii. On average, campaigns in 2008/2009 had more advert appearances (on average 15.5 appearances) than in 2006 (on average 6 appearances) and lasted for longer (5.5 months in 2008/2009 compared with 3 months in 2006).
- iii. Advertisements containing a picture of a child were more abundant in 2008/2009 (32 advertisements, 97% of the advertisements from 2008/2009) compared to 2006 (7 advertisements, 44% of the advertisements from 2006).
- iv. Attributes associated with an older child were more prevalent in 2008/2009 (between 29 and 5 advertisements (88% and 15% of print advertisements from 2008/2009) depending on the attribute) compared to 2006 (between 6 and 1 advertisements (38% to 6% of print advertisements from 2006) depending on the attribute).
- v. Product pack shots were more likely to be visually displayed in 2008/2009 (33 advertisements, 100% of advertisements from 2008/2009) than in 2006 (6 advertisements, 38% of advertisements from 2006).
- vi. The product stage was more likely to be visible in 2008/2009 (29 advertisements, 88% of advertisements from 2008/2009) than 2006 (5 advertisements, 30% of advertisements from 2006).
- vii. With the exception of four advertisements for two “goodnight milk” products in 2008/2009 the product stage was not identified in the main body of the advert during either time period.
- viii. The term follow-on formula was identified in all advertisements.
- ix. All advertisements used font styles and case styles (lower or upper case or a combination of the two) identified by the literature review as being more legible.
- x. Higher resolution colour combinations were more often used for text in 2008/2009 (24 advertisements, 73% of the advertisements from 2008/2009) than 2006 (2 advertisements, 13% of the advertisements from 2006)

137. Key differences in the nature of follow-on formula television advertising are outlined below:

- i. Product pack shot was shown in all advertisements from both time periods, however the product stage was more likely to be present on the pack shot in 2006 (21 advertisements 96% of advertisements from 2006) than in 2008/2009 (4 advertisements, 57% of advertisements from 2008/2009).
- ii. On average warning text (to the effect that the product is not a substitute for breast milk before six months) was held on screen for longer in 2008/2009 (average of 14 seconds, the average word count was 18.7) compared to 2006 (average of 8.7 seconds, the average word count was 14.3).

- iii. Fathers were more likely to feature in advertisements in 2008/2009 (on screen in 3 advertisements, 43% and in the voice over of 2 advertisements, 29% of advertisements from 2008/2009) than 2006 (not featured in any advertisements).
- iv. With the exception of smiling, attributes associated with older babies, were more prevalent in 2006 (22 -2 advertisements (100% to 9% of television advertisements from 2006) depending on the attribute) than 2008/2009 (6 to 1 advertisements (86% - 14% of television advertisements from 2008/2009) depending on the attribute).
- v. All advertisements used font styles and case styles (lower or upper case or a combination of the two) identified by the literature review as being more legible.

138. It should be kept in mind that the move from sponsorship slots to commercial advertising may account for some of the changes outlined above.

139. Key differences in the nature of infant formula advertising are outlined below. This advertising is only permitted in scientific publications and for the purposes of trade prior to the retail stage. Therefore all the examples are from print advertising in the scientific publications that were sampled.

- i. A product pack was more likely to be shown in advertisements from 2006 (8 advertisements, 89% of advertisements from 2008/2009) than 2008/2009 (6 advertisements, 76% of advertisements from 2008/2009).
- ii. Age of use recommendation was more likely to be shown on visible packs in advertisements from 2008/09 (16 advertisements, 76% of advertisements from 2008/2009) than 2006 (3 advertisements, 33% of advertisements from 2006). Age of use was shown elsewhere in the advert in seven advertisements (33% of advertisements from 2008/2009) from 2008/2009 and no advertisements in 2006.
- iii. Nutrition claims were more prevalent in 2008/2009 (19 advertisements 91% of advertisements from 2008/2009) than in 2006 (4 advertisements, 44% of advertisements from 2006).
- iv. All infant formula advertising in 2008/2009 made reference to breast feeding being best, compared to 56 per cent (5 advertisements) in 2006.
- v. The term Infant formula was visible in all but one advert; that advert was from 2006.

Presentation

140. There was not enough evidence to show that the in-store presentation (detailed in paragraph 23 above) of infant formula and follow-on formula is any different from that for other types of products, where those within a brand range may also be positioned next to each other. It was not possible to assess the nature of presentation any further as other variables (e.g. where products are displayed in relation to the context of the whole store layout) associated with the way it would be seen by the consumer had not been recorded. There was, however, no evidence of “powerwalls” (a technique used in retail premises at the point of purchase / sale to attract attention to brands and product ranges) being used to promote the sale of infant formulas or follow-on formulas.

141. It was not possible to assess whether there have been any changes in the presentation of infant formula and follow-on formula following the introduction of the 2007 Regulations. This was primarily due to the absence of data on the way products were presented in 2006.

Summary of findings

142. The research did show that the advertising of infant formula and follow-on formula has changed between the 2006 and 2008/2009. There is, however, no evidence to link these changes to the introduction of the 2007 Regulations or a wish by manufacturers to make the advertising clearer.

143. Information of value to “involved consumers” about product qualities increased in prevalence from 2006 to 2008-09 in print advertisements where such information might be more readily absorbed.

144. TV advertisements for formula products used techniques designed to play on the emotions of consumers more often than did print advertisements, and emotional triggers increased in prevalence from 2006 to 2008-09. These emotion-triggering techniques can influence less involved consumers by drawing their attention to an advert. However, from the advertiser’s perspective, it is important to achieve an optimal level of emotionally-arousing attributes because too much emotional arousal can impede uptake of information from advertisements by consumers. The use of these emotion-triggering attributes was virtually absent in the sampled infant formula advertisements.

145. Based on the advertising and consumer research literature there is nothing to suggest the text used in advertisements from 2008/2009 would be “illegible”. The narrative legibility of text in print and TV for follow-on formula and in advertisements for infant formula adopted styles of presentation associated with greater perceptual clarity for readers/viewers. For follow-on formula advertisements, this clarity generally increased in prevalence from 2006 to 2008-09, while this trend was less consistent across different text in infant formula advertisements. The research report indicated that if the panel did think this should be improved, the literature would suggest that boxed text, bold text or underlined text can be easier to read, a technique not utilised to date.

146. TV advertisements for follow-on formula were predominantly standard advertising messages in 2008-09, but primarily took the form of sponsorship slots attached to programmes in 2006. Many of their information and format features were the same across these two samples, but the messages in 2008-09 were generally longer and faster paced than those in 2006. While able to display more information of potential value to consumers, the TV advertisements from 2008-09 may have proved more difficult to process because of their faster rate of presentation and the distraction of more emotion-triggering attributes. For these reasons, the research report notes that it is difficult to say whether the 2008-09 formats would be more effective than the 2006 formats. The answer to any such question will depend upon the type of effects being measured. The longer 2008-09 advertising formats could provide more opportunity for viewers to become

emotionally engaged, but this would not necessarily yield a more pronounced informational impact.

147. Cross-media analyses revealed transference of specific attributes across advertisements for specific brands that appeared in different media. These attributes include ones of significance to target market identification, judging age appropriateness of advertised product, and brand differentiating information that might be important to involved consumers.

Research project two – effectiveness of the controls

148. Points (b) and (c) of the remit asked the panel to *Establish whether consumers are clear that presentation of, and advertising of, follow-on formula relates to formula for older babies and not infant formula and; Establish if infants under six months of age are being fed follow-on formula and if so the reasons why.* It was agreed that to answer these questions a specific research project should be commissioned. A copy of the specification for this research project can be found as Annex 5.

149. The objectives of the research were:

Objective one: To assess whether infants under six months are being fed follow-on formula and if so, the reasons why;

Objective two: To assess whether the new controls upon the ways in which follow-on formula are presented and advertised have been effective in making it clear to all those likely to be involved in child care including parents, formal and informal carers, health professionals and parents-to-be, that advertisements for follow-on formula relate to formula only for older babies (six months plus), and are not perceived as, or confused with infant formula advertising, which is prohibited and;

Objective three: Based upon this evidence, to draw conclusions about what changes, if any, could be made to the presentation and advertising of infant / follow-on formula, for consideration by the review panel.

150. As explained in paragraphs 40 and 41 above, having considered the proposals put forward the panel agreed that GfK NOP Social Research in collaboration with the University of Kent were best placed to meet the requirements of the project.

151. The review panel thought it important to incorporate a literature review in the project, to provide both a context for the research and also to inform its direction and design. With this in mind the review panel agreed that the research team should include an academic with expertise in the social scientific investigation of child feeding, health, parenting and the family, as well as a company capable of gathering qualitative and quantitative data.

152. The research included both qualitative and quantitative research carried out across the UK. In response to comments made by key stakeholders at a meeting held on 11th July 2008, the research looked at all those involved with child care, including parents, formal and informal carers, health professionals and parents-to-be (GfK NOP Social Research, 2009).

153. Having agreed which team should undertake the work the review panel was informed that previous work conducted by GfK and the University of Kent [Lee, Ellie (2007)

“Health, morality, and infant feeding: British mothers’ experiences of formula milk use in the early weeks” *Sociology of Health & Illness* 29(7) 1075-1090)] had been supported by a grant from the IDFA. Following detailed discussion the panel concluded that this did not detract from the robust proposal, which had been chosen on its merits and the scientific approach proposed. The panel ensured that it was involved throughout the life of the project and commented on and agreed the research design and all materials used. In particular the panel was asked to comment on and agree the draft materials for the qualitative research, the draft questionnaires and sampling plans and commented on the draft literature review and final report. In addition the panel noted that GfK would have to abide by the relevant professional codes of practice and COI’s terms and conditions, which include a clause relating to the production of unbiased data.

154. The research comprised three parts:

- i. A literature review of existing peer-reviewed research into the use of infant and follow-on formula. The literature review looked at the incidence of use of follow-on formula milk for feeding infants under six months of age; understanding among those responsible for feeding babies (parents in particular) about use of follow-on formula milk; and the relation between advertising of follow-on formula and infant feeding practices
- ii. Qualitative Research, with a total of 18 focus groups and 13 in depth interviews amongst parents (expectant and recent), carers (formal and informal) and healthcare professionals (including health visitors and midwives).
- iii. Quantitative Research i.e. a survey, based on face to face in-home interviews with mothers of babies under six months (519), their partners (154), pregnant women (235), their partners (102) and unpaid carers of babies under six months (143). At the same time a telephone survey of health professionals was undertaken which included health visitors (100) and midwives (100), and Peer Supporters (50).

155. The survey used a quota technique in areas that were known, historically, to have a high proportion of children. Although this missed other areas of the country, the only way to ensure all areas of the country would have an even chance of taking part in the survey would have been to run a random probability sample (sampling uniformly across the country). With the incidence of mothers of children under six months at around 1.6 per cent this would have been extremely expensive and would have taken many months to conduct. It was not possible to use the Register of Births as, due to data protection purposes, it would have required ONS to contact people by post to ask them to opt in, which would have had time/resource implications. The approach taken was therefore the most effective possible given the time and budget for this research.

156. A further point to note is that all the data (deriving from both the survey and the qualitative element) are self-reported. In other words, in commenting on issues such as the impact of advertisements, the research is limited to reporting respondents’ views of

the impact of advertising on them. While the robustness of the methods used and the sample size give these findings much weight, it is important to note that individuals may not always be fully aware of the influences acting upon them and that this study does not go beyond self-attribution in designating these.

Findings

Objective one: To assess whether infants under six months are being fed follow-on formula and if so, the reasons why.

157. The literature review noted that there were few existing data on early use of follow-on formula (i.e. before six months). What was available – most notably the most recent Department of Health Infant Feeding Survey – indicated that up to 12 per cent used follow-on formula before six months (GfK NOP Social Research, 2009).
158. Of the 816 respondents to the survey who could have been feeding formula (i.e. mothers, partners and carers) 22 (2.6%) were feeding follow-on formula to children in their care. All of these infants were aged 16 weeks or more (i.e. were over four months).
159. Those using follow-on formula reported little confusion about its proper usage in terms of the age for which it was intended. All but one respondent in the survey knew the product they were using was intended for children over six months. When this was explored in the qualitative work respondents reported that they knew the product was for infants from six months, but had made a considered decision to feed it.
160. Respondents feeding follow-on formula to infants under six months in this research gave four distinct reasons for doing so:
- i. The baby needed it (nine out of 14 respondents in the survey).
 - ii. The baby was hungry and not getting sufficient food from infant formula (six out of 14 respondents in the survey).
 - iii. Health visitor's advice (From the qualitative research).
 - iv. Follow-on formula was seen as a natural progression and their baby was ready (from the qualitative research).
161. It should be noted that the qualitative research showed that for health visitors and midwives, early use of follow-on formula was not a major concern. These health professionals said they were far more concerned to promote breast feeding and discourage early weaning^{††††} (i.e. within the first six months) than they were concerned about early use of follow-on formula.

Objective two: To assess whether the new controls upon the ways in which follow-on formula are presented and advertised have been effective in making it clear to all those likely to be involved in child care including parents, formal and informal carers, health

†††† See Glossary. It is not known to what extent healthcare professionals were using the strict definition of the term.

professionals and parents-to-be, that advertisements for follow-on formula relate to formula only for older babies (6 months plus), and are not perceived as, or confused with infant formula advertising, which is prohibited.

162. Very little high quality research about perceptions of formula milk advertising or the relation between advertising and feeding practices was identified by the literature review.

163. Respondents were shown print and television advertisements during interviews and in the qualitative research. Between 945 and 657 (82% to 57% respectively from a sample size of 1153, the numbers depend on the advertisement being shown) respondents to the survey were able to identify the suitable age for the products in print advertisements and between 853 and 577 (74% - 50% respectively) for television advertising. However some respondents could not correctly identify the age for which the product was suitable (243 (21%) to 138 (12%) for print advertising and between 415 (36%) and 196 (17%) from a sample size of 1153 for television advertising depending on the advertisement being shown during the interview). Some responded “don’t know” (between 66 (6%) and 156 (14%) depending on the advertisement being shown in the interview, including both print and television advertising and from a sample of 1153); the size of this contingent also varied depending upon the advert shown.

164. In the qualitative research respondents particularly mentioned two indicators that had led them to their conclusion:

- Product awareness – where parents were aware of the different products on offer (i.e. had purchased infant formula / seen packaging in stores), they were able to identify the product advertised from the product / packaging image. In particular parents reported using the product stage (1, 2 or 3) provided by the manufacturer to identify the age of the child for which the product was intended.
- Images of infants – where infants were shown in advertisements, the characteristics of the child also enabled parents to identify the age for which the product was intended. These characteristics included: head control, arm movement, sitting upright, hair and teeth, self-feeding, emotional facial expressions.

165. In the qualitative research some recent and expectant parents were unable to identify what type of product some of the more ambiguous advertisements were promoting. The qualitative research found that these respondents tended to be first time parents, who had less product knowledge and less awareness of the physical characteristics of infants aged six months and over.

166. When directly asked in the survey, between 74 per cent and 51 per cent of respondents thought the age of the child that the formula was suitable for was clear, (“very clear” or “fairly clear”). When compared to the earlier question about the age of infant they thought the product was suitable for (unprompted question), those who thought the product was for infants over six months as well as those who (mistakenly) thought it

suitable from birth equally thought the advertising was clear (“very clear” or “fairly clear”). In all cases one per cent responded “don’t know”.

167. When asked their opinion more than half of parents and carers in the survey thought all the advertisements shown should be clearer than they were that they were advertising follow-on formula (70% to 55% from a sample of 1153 depending on the advert being shown in the interview)
168. In the qualitative research all the informal childminders consistently correctly stated that all the advertisements shown were for follow-on formula (though some advertisements required closer scrutiny than others).
169. In the qualitative research all registered childminders were able to correctly state that all of the advertisements shown were for follow-on formula. However, registered childminders reported that they had little say in what milk was fed to children under six months in their care. None was responsible either for deciding what formula was fed or for purchasing, as parents provided them with it. Furthermore, registered childminders reported they were giving very little feeding advice to parents.
170. In the qualitative research the health professionals interviewed were critical of any advertising of formula. All were able to identify that advertisements shown were for follow-on formula.
171. The perceived lack of clarity of the advertising found in both the survey and the qualitative research does suggest that the controls on advertising have not been totally effective in ensuring that all follow-on formula advertising is clear about the age of the child for which the product is intended. Where the survey tackled this issue directly (amongst health professionals and peer supporters), 76 per cent (190 respondents out of a sample of 250 respondents) thought that the regulations did need strengthening.

Objective three: Based upon this evidence, to draw conclusions about what changes, if any, could be made to the presentation and advertising of infant / follow-on formula, for consideration by the review panel.

172. Given the findings cited above the research report notes that it is difficult to support the view that changes need to be made to the current presentation and advertising of follow-on formula and infant formula.
173. Nevertheless, to the extent that the current controls on formula advertising are intended to make it clear to *all* those likely to be involved in child care that advertisements for follow-on formula relate only to babies six months and over the report notes that it could be argued that current advertising could be improved. One respondent of the 22 in the survey (2.6%) who was feeding follow-on formula under the age of six months did not know the product they were using was intended for children over six months. As the survey showed, advertisements for follow-on formula were not interpreted appropriately by all respondents. Some were mistaken about the age of child for which the product advertised was intended (the size of this contingent varied depending on the advert shown

in the interview and ranged from 12% to 36%), while most parents and carers thought all the advertisements shown should have been clearer than they were.

174. Given the findings of this research, the clarity of follow-on formula advertising could be improved by making the following changes simultaneously:

- The age of the child could be made clearer in the voiceover for the television advertisements
- The age of the child could be made clearer in the text of the press advertisements
- Children who appear in all advertisements could be unambiguously aged six months and over (by demonstrating features such as good head and arm control, emotional expression, an outdoor environment and even self-feeding)
- The size and clarity of product images (i.e. packaging) could be enhanced
- A clearer explanation of the meaning of infant formula and follow-on formula could be provided to consumers.

Presentation

175. In the qualitative research parents of babies under six months of age and expectant parents reported that they did not feel there was an issue with the clarity of in-store presentation; this was because they knew what product they were looking for and would examine the label to check the suitable feeding age before purchase. When expectant parents were asked this question in the survey some said they had seen different infant formula types for infants of different ages in shops, and, when asked 80 per cent (157 respondents from 196) said they thought the in-store presentations were clear that some products were for babies under six months and some for babies over six months.

176. As the survey could not accurately reproduce behaviour in store (i.e. picking up the products to look at them) it was decided not to investigate further in the survey whether there is confusion associated with the presentation of infant formula and follow-on formula.

Additional findings

177. In carrying out the research, additional data regarding infant feeding choices were gathered. Though not specifically linked to answering the objectives of the research, they were collected while setting the context of the discussions in both the qualitative and quantitative research. The key findings are outlined below:

178. The literature review, the qualitative research and survey all highlighted that the factors, which shape feeding practices are likely to be multiple and complex. Although advertising may play a role in shaping infant feeding behaviour, the way in which it may do this (together with other factors) has so far been the subject of no peer-reviewed research.

179. The qualitative work showed that the terms “follow-on formula” and “infant formula” were not universally understood by respondents and could not be defined or associated with specific products in an infant’s life. Instead parents tended to come into contact with formula products at point of purchase (e.g. in a supermarket). Their knowledge was therefore shaped by the way the products themselves are identified i.e. by the brands and product stages. Almost all of the respondents spoken to during the survey who were purchasing formula, could correctly identify that: stage 1 (e.g. Aptamil 1, SMA Gold) could be fed to children from birth; stage 2 (e.g. Aptamil 2, SMA White) was for hungrier children and could be fed from birth; stage 3 (e.g. Aptamil 3, SMA Progress) was for children older than six months. When asked how they knew the recommended age most stated that they used the label.

180. The qualitative research found that instances of weaning (see footnote on page 40) in the first six months were higher (40 out of 84 respondents), than instances of early use of follow-on formula (6 out of 84 respondents^{§§§§}). Health visitors and midwives reported early weaning as being a more important issue than early use of follow-on formula.

^{§§§§} These findings are from qualitative research, which do not represent the general population and as such can only be indicative not conclusive.

Research project three – purchase of follow-on formula

181. The review panel agreed that data on infant formula and follow-on formula purchases would be useful to the review. The review panel noted that such data could offer only an oblique measure of whether infants under six months were being fed follow-on formula and various assumptions would have to be made. None the less, this additional research could valuably complement research project two.
182. Initially the panel suggested that Electronic Point of Sale (EPOS) data may be able to provide this level of detail. However further investigation revealed that EPOS data could not be scrutinised to the level required and would not allow for assessment of individual shopping baskets i.e. matching an individual purchase of follow-on formula with the purchase of products indicative of household composition in order to interpret usage of follow-on formula.
183. The review panel agreed that EPOS data would not provide the necessary level of detail and suggested that loyalty card data might be better placed to provide this data. Having identified three loyalty card schemes in the UK, which would collect data on follow-on formula purchases, the review panel agreed that these companies should be asked to put forward proposals. A copy of the specification for the analysis can be found as Annex 6. In response two proposals were received and circulated to the panel. It was agreed that Boots was best placed to meet the requirements of the project.

Objective

184. This project was intended to address point (c) of the review's remit. The objective of the analysis was:

To compare purchase of follow-on formula with information held on the age of infants in the household and/or with the purchase of key products that would indicate the age of infants in that household, for example nappies of a particular size.

Method

185. The analysis used the Boots Advantage Card database, as it stood at the end of May 2009 (Boots Insights, 2009). Boots Advantage Card captures around 55 per cent of Boots transactions and around 70 per cent of the value spent in Boots stores. Boots Advantage Card has around 17 million active members of which 226,178 were identified as purchasing follow-on formula during the period May 2008 to June 2009.
186. The Advantage card customers buying follow-on formula were then split into two groups: those who had registered their baby's date of birth with Advantage Card Parenting Club (65% or 147,570 customers in 2008/2009) and those where the age of infants in the households was unknown (35% or 78,608 customers in 2008/2009).

187. Products associated with older infants, such as nappies for older babies and late stage baby food, were used as proxy to indicate the presence of an infant over six months of age in the household. These data, together with data held by the Parenting Club on older children, were used to exclude customers who may be buying follow-on formula for an older child. Customers making just one purchase were also discounted as they could be buying for someone other than themselves.

188. A flow chart showing how the data from 2008/2009 were scrutinised is provided as Annex 7.

Findings

189. The more robust findings came from the analysis of customers registered with the Advantage Card Parenting Club. More Advantage card customers buying follow-on formula (65% or 147,570 customers in 2008/2009) were in the Advantage Card Parenting Club than were not. The analysis of this group showed that in 2008/2009:

- Of these customers, 3.2 per cent (4757 customers) had an infant under six months of age and there was no indication of an older child in the household
- Of these customers 1.2 per cent (1859 customers) had an infant under five months of age and there was no indication of an older child in the household
- Of these customers two per cent (2898 customers) were buying follow-on formula, had an infant in the household aged between five and six months and there was no indication of an older child.
- This shows that a sizeable per centage (61%) of customers buying follow-on formula, where there is an infant under six months and no evidence of other older children, are doing so when the infant is five months old.

190. A number of points must be borne in mind in considering the findings of this analysis. Firstly, although these data cover a large number of households, the data were not collected in a systematic manner (i.e. for the purposes of the analysis commissioned for this review). Secondly, interpretation of the findings is based upon the assumption that any follow-on formula purchased is then fed to an infant under six months of age. For these reasons, the analysis can only provide an oblique measure of the number of cases where follow-on formula is fed to an infant under six months of age.

191. Where the age of infant is not known through parenting club data, the findings are less robust. Analysis of this group of customers identified 57 per cent of customers with unknown age of child who may be purchasing follow-on formula for an infant under six months of age. As well as making the assumptions detailed above, assumptions also have to be made about the age of any infants in the household. Using products associated with older babies as a proxy, does not provide an accurate reflection of the age of children in the household or the age of children for whom the follow-on formula might be purchased.

Summary of findings

192. The most dependable results are for those customers registered with the Advantage Card Parenting Club. The results of the analysis of this group of consumers would seem to indicate that 3.2 per cent of households with infants under six months of age, and no indication of older infants for whom follow-on formula is being bought, are purchasing follow-on formula. Of these cases 61 per cent purchased follow-on formula when the infant was five months of age.

193. Whether follow-on formula purchased is then fed to an infant less than six months of age, cannot be extrapolated from this analysis. Nor can the analysis tell us why follow-on formula might be fed to infants less than six months of age.

Discussion and summaries of findings

194. The independent review panel was asked to assess whether the new controls upon the ways in which follow-on formula are presented and advertised have been effective in making it clear to parents, parents-to-be and carers that advertisements for follow-on formula are meant only for babies over six months and are not perceived or confused as infant formula advertising, which is prohibited and to answer the specific questions set out in its remit (detailed in paragraph 19 above). The panel considered each of these specific questions and the information/evidence relevant to it. The following paragraphs provide a summary of the panel's consideration.

195. In considering the remit the panel remained sensitive to the way it magnifies a small, but important, part of a wider set of public health issues relating to infant feeding (detailed in paragraphs 28 to 31). The panel also kept in mind that the information and evidence upon which the conclusions and recommendations were finally based should be robust and able to withstand scrutiny. In particular when considering the information and evidence the panel was ever mindful of the limitations imposed by the research as outlined in paragraphs 132 to 133, 155 to 156 and 190 to 191. In addition the panel was mindful of those limitations associated directly with the remit. For example one difficulty in conducting this review was the absence of reference data of appropriate quality from before the formulation and introduction of the 2007 Regulations to enable a sound comparison of advertising and promotion practices and their influences before and after the 2007 Regulations were introduced.

Point (a) of the remit: Establish the effect of the new controls on the ways in which infant formula and follow-on formula are presented and advertised.

196. New research through research project 1 and the team at the University of Leicester, was specifically commissioned to provide evidence to address point (a) of the remit and to examine factors in advertising that mediate a consumer response (detailed in paragraph 198 below). The panel noted that such research only provides an analysis of the content of presentation and advertising, taking into account existing literature on the factors previously shown to mediate consumer responses. Thus, it cannot report on the way a particular advertisement is "read" and understood in practice.

197. The research showed that the advertising of both infant formula and follow-on formula has changed since the introduction of the 2007 Regulations. Most advertising (108 advertisements, 97 per cent of all advertising identified) was in print or on television and the changes identified differed between these two media (University of Leicester, 2009).

198. The literature review identified factors (specific attributes of an advert, such as images shown; music; text; emotional triggers, such as images of mother with infants) known to mediate consumers' reactions or responses to advertising and improve legibility of text shown in advertising. Factors identified by the literature review that might affect legibility were font style, case style (lower or upper case or a combination of the two) and higher resolution colour combinations (colour of the text compared to the colour of the

background and the contrast between these two features). In developing the coding frames for content analysis the researchers at the University of Leicester also drew on the findings of research project two, which identified factors that may specifically affect the clarity of infant formula and follow-on formula advertising, such as images of product pack.

199. The literature review conducted by the University of Leicester team identified a lack of research investigating the effects a combination of these factors might have. Therefore, although we can use these individual factors as a useful basis for examining any change in the ways that infant formula and follow-on formula are presented and advertised since the new controls were introduced, the research could not take account of any combination of factors when devising measures to study the content of presentation and advertising.

Changes in follow-on formula print advertising

200. The specially-commissioned research project 2 found that parents and carers use product imagery, including information about product stage, and the characteristics of infants shown in advertising, to identify the age of the child for which the product is suitable. Both these factors have become more prominent since the introduction of the new controls. Advertisements from 2008/2009 were more likely to include a picture of a child in 2008/2009 (32 advertisements (97%)) compared to advertisements in 2006 (7 advertisements, 44%). In 2008/2009 attributes associated with an older infants were more prevalent (29 to 5 advertisements (88% to 15%) depending on the attribute) than in 2006 (6 to 1 advertisements (33% to 6 %) depending on the attribute). In 2008/2009 pack shots were included in all advertising compared to 38 per cent (6 advertisements) of advertisements in 2006.

201. The text in advertisements in 2006 and in 2008/2009 used font and case styles (lower or upper case or a combination of the two) shown by the literature review to be more legible than other fonts and case styles. However, the University of Leicester analysis of advertisement content found that higher resolution colour combinations were used more often in 2008/2009 (24 advertisements, 73% of the advertisements from 2008/2009) than 2006 (2 advertisements, 13% of the advertisements from 2006). This indicates that text in advertising may have become easier to read. The literature review also identified that providing text in a box, in bold font or underlined, could further improve clarity, techniques not utilised in print advertisements in either 2006 or in 2008/2009.

Changes in follow-on formula television advertising

202. In contrast to print advertising, all television advertisements included a pack shot. However, the manufacturers' product stage (such as 3 or SMA progress) was more likely to be shown in 2006 (21 advertisements, 96% of advertisements from 2006) than in 2008/2009 (4 advertisements, 57% of advertisements from 2008/2009). With the exception of smiling, attributes associated with older babies were more prevalent in 2006 (22 to 2 advertisements (100% to 9% of television advertisements from 2006)) than 2008/2009 (6 to 1 advertisements (86% to 14% of television advertisements from 2008/2009)). A decline in the presence of these factors may indicate that television advertising has become less clear as to the age suitability of the product. The panel noted

that the changes in television advertising may have been as a result of a shift from sponsorship slots (usually a short credit shown at the beginning and end of a programme) to commercial advertising (shown within a commercial break), particularly as sponsorship slots may not include any advertising message.

203. The text in television advertisements shown in 2006 and in 2008/2009 used font styles and case styles (lower or upper case or a combination of the two) shown by the literature review to be more legible. However, the research did identify that the text was shown on screen for longer in 2008/2009 (average of 14 seconds with an average word count of 18.7 words) than 2006 (average 8.7 seconds with an average word count of 14.3 words). The literature review also identified that providing text in a box, in bold or underlined could further improve legibility - techniques not used in advertisements from either 2006 or 2008/2009.

Changes in infant formula advertising

204. Advertising infant formula to the general public is prohibited. It is only permitted in scientific publications, such as journals for healthcare professionals, and for the purposes of trade prior to the retail stage. When, as part of research project two, healthcare professionals were asked their views they said that infant formula advertising could be clearer and that this could be achieved by providing a clearer explanation of the terms “infant formula” and “follow-on formula” and by providing text in larger font.

205. The University of Leicester research showed that, with the exception of one advert in 2006, all infant formula advertisements clearly identified that they were for infant formula. The research also showed that an age of use recommendation was more prevalent in 2008/2009 than in 2006 whether it was shown in a product image (76% in 2008/2009 compared to 33% in 2006) or displayed elsewhere in the advert (33% in 2008/2009 compared to none in 2006). The text used in advertisements from both 2006 and 2008/2009 used font styles and case styles (lower or upper case or a combination of the two) shown by the literature review to be more legible.

Comment on the changes in advertising

206. Whether or not the changes recorded are the result of the introduction of the 2007 Regulations, and an attempt to comply with the new controls requiring there to be no confusion between the advertising of infant formula and follow-on formula, could not be established by the research undertaken for the purposes of this review.

Presentation

207. In addition, the panel concluded that it was not possible, given the outcome of the commissioned research to assess whether the presentation of infant formula and follow-on formula products in-store has changed following the introduction of the 2007 Regulations. This is largely due to the lack of data about the way products were presented in 2006.

208. In discussing the research findings, the panel agreed there was insufficient evidence available to assess the presentation of infant formula and follow-on formula products in

store or to show that presentation is any different to that for other products. There was also no evidence of “powerwalls” (a technique used in retail premises at the point of purchase/sale to attract attention to brands and product ranges) being used to promote formula products

209. As already noted above (detailed in paragraph 132 above) limitations to the interpretation of these findings need to be borne in mind. These limitations not only include the absence of information available for analysis but also that there are various factors which affect the way advertising is viewed. There is a complex of influences affecting impact that were not measured in this research. For example in the case of television advertising and sponsorship slots the impact will depend on many influences, such as the size of the audience to which it is shown, how involved that particular audience is with product being advertised (this can be dependent on the adjacent programs), whether the advertisement is a sponsorship slot (usually a short credit shown at the beginning and end of a programme) or a commercial advertisement (shown within a commercial break). It is also not possible to say what effect, if any, the changes in the content of the advertising observed over the two time periods will have had on those viewing the advertising. Although the research looked at specific factors known to have an effect on the memory for advertisements, memory for brand, attitude to advertisements, attitude to brand, intention to purchase, readability and physiological responses, it did not look at these factors in combination. This is true of the literature, where the effect of advertisements as a whole is generally not assessed. It is therefore not possible to draw conclusions about how an advert as a whole would be viewed.

210. The research did find that the advertising of infant formula and follow-on formula has changed between the periods looked at i.e. 2006 and 2008/2009. These findings could be consistent with a possible link with the introduction of the 2007 Regulations, but they cannot represent evidence that links these changes to the introduction of the 2007 Regulations. Similarly, they are consistent with a motivation on the part of manufacturers to make the advertising clearer but they cannot represent evidence of such a motivation.

Point (b) of the remit: Establish whether consumers are clear that presentation of, and advertising of, follow-on formula relates to formula for older babies and not to infant formula.

211. New research project two was specifically commissioned (from the team at GfK NOP Social Research) to explore infant feeding practices, the reported reasons why certain feeding choices are made and how advertising is seen and understood. The research involved both qualitative and quantitative elements and was designed to address points (b) and (c) of the remit (detailed in paragraph 19 above).

Advertising

212. When shown examples of print advertising from 2008 most parents, parents-to-be and carers correctly identified the age of child for whom the product was suitable (945 (82%) to 657 (57%) depending on the advert being shown in the interview, from a sample of 1153), however some did not (243 (21%) to 138 (12 %) depending on the advert being shown in the interview, from a sample of 1153). Between six and 12 per cent (66 and 133

of respondents to the survey) responded “don’t know”. The panel has assumed that by responding “don’t know” the parent or carer could not correctly identify the age the product was suitable for (GfK NOP Social Research, 2009).

213. When shown television advertising from 2008 between 853 to 577 (74% to 50% depending on the advert being shown in the interview, from a sample of 1153) parents, parents-to-be and carers were clear that advertisements for follow-on formula were for infants over six months of age. However some were not clear about this distinction (415 (36%) to 196 (17 %) depending on the advert being show in the interview, from a sample of 1153). Between eight and 14 per cent (97 and 156 respondents from 1153) responded “don’t know”. The panel has assumed that by responding “don’t know” the parent of carer could not correctly identify the age for which the product was suitable for. The results relating to the “clarity findings’ were analysed according to National Statistics Socio-economic Classification and no differences emerged.
214. Of the 200 healthcare professionals interviewed half reported that advertising was easy to understand and 37 per cent reported that it was not easy to understand (from a sample of 200). The remaining 15 per cent either reported that they had not seen any advertisements or did not know. Healthcare professionals were interviewed via telephone and therefore were not responding to advertisements they had been shown (unlike parents, carers and parents-to-be who were interviewed face-to-face). Since healthcare professionals are likely to encounter advertisements for both infant formula and follow-on formula and may also pass on their understanding to parents, parents-to-be and carers their views were considered potentially valuable. However, given that these results were obtained via telephone interviews where advertisements could not be shown, their views on clarity should be given less weight than those of parents, parents-to-be and carers and should be treated with greater caution.
215. As already noted above (detailed in paragraph 156 above) it is important to bear in mind that all the data (the qualitative and quantitative surveys) are self-reported. In other words, in commenting on issues such as the impact of advertisements, the research is limited to reporting respondents’ views of the impact of advertising on them. While the robustness of the methods used and the sample size (of the survey) give these findings much weight, it is important to note that individuals may not always be fully aware of the influences acting upon them and that this study does not go beyond self-attribution in designating these.
216. The views of key stakeholders on the advertising of follow-on formula were also considered. These included the LACORS view that consumers are unable to distinguish between infant formula and follow-on formula and thus see the advertising of follow-on formula as applying to infant formula as well⁵¹. The NCT and other stakeholders provided the panel with examples of advertising that, in its view, did not clearly distinguish between infant formula and follow-on formula^{11,50}. Neither LACORS nor NCT provided reference to any systematic research to support their views. As such, the panel could not consider either as having the same weight as the results from research

project two. Nevertheless, the panel note that the views of LACORS' and the NCT followed the same direction as the GfK NOP research findings.

Presentation

217. The NCT commented that the presentation of infant formula and follow-on formula in retail settings often “jumbles the two types of products up together and causes confusion”¹¹. Respondents to the qualitative phase of research project two were asked whether the presentation of infant formula and follow-on formula in retail settings (i.e. the way in which these products are arranged and the setting in which they are displayed) was confusing as to the identity of the products. Parents of babies under six months of age and expectant parents reported that they did not feel there was an issue with the clarity of in-store presentation; this was because they knew what product they were looking for and would examine the label to check the suitable feeding age before purchase. When expectant parents were asked this question in the survey, 80 per cent (157 respondents from 196) said they thought the in-store presentations were clear that some products were for babies under six months and some for babies over six months. As the survey could not reproduce behaviour in store (i.e. picking up the products to look at them) it was decided not to investigate this any further in the survey.

Point (c) of the remit: Establish if infants under six months of age are being fed follow-on formula and, if so, the reasons why.

218. Research project two provided new evidence to address point (c) of the remit. It established that 2.6 per cent (22 out of 816 in the survey) of infants under six months of age were being fed follow-on formula. Amongst the 22 respondents in the survey there was little confusion about the proper use of follow-on formula. All but one respondent knew the product they were using was intended for infants aged over six months and had made a considered decision to feed follow-on formula early. No cases of follow-on formula being fed to infants under 16 weeks of age were found.

219. Analysis of data collected by Boots Advantage Card indicated 3.2 per cent of customers (4757 from a sample of 147,570) who buy follow-on formula also have infants under six months of age in the household and do not appear to have older children. In 61 per cent of these cases (2898 out of 4757) the infants were aged five months.

220. As detailed in paragraph 190 above there are a number of points that must be borne in mind in considering the finding of the Advantage Card analysis. Firstly although the data covered a large number of households they were not collected in a systematic manner (i.e. for the purposes of the analysis commissioned for this review). Secondly, the interpretation of the findings is based upon the assumption that any follow-on formula which is purchased by a household with an infant under six months of age where there is no older infant, is bought for (and presumably fed to) that infant under six months of age. For these reasons, this analysis can only provide an oblique, indicative measure of the number of cases where follow-on formula is fed to an infant under six months of age. The findings, do, however, appear to be aligned with the findings of research project two.

221. Information in line with the findings above was provided by the BDA, who stated that some babies are fed follow-on formula before the age of six months¹⁹, and by the CWT in a report which presents analyses of website discussions by parents and parents-to-be. CWT state that “there was no real evidence that [follow-on formula products] were being used or discussed by parents of babies much younger than six month”⁴⁶; CWT does, not, however, claim that the findings of this work are representative of the behaviour of all parents of young infants.

Point (d) of the remit: Identify any enforcement issues which have arisen since the new controls came into force.

222. The panel did not commission any research to address this aspect of its remit and instead asked key stakeholders to provide information. Information the panel received included opinion from LACORS and the ASA. This revolved around difficulties they have encountered in relation to enforcement of the 2007 Regulations and also views of BMA on behalf of members of the BFLG on what they consider to be breaches of the legislation. In all cases the information submitted represented the opinion of these stakeholders in support of which they did not supply reference to any systematic research.

223. In the opinion of LACORS and ASA there are several issues related to the enforcement of the 2007 Regulations. One is about the way certain terms in the Regulations should be interpreted, especially what should be considered as “advertising” or as a nutrition or health claim^{21,51}. However where guidance has been provided (in guidance notes to the 2007 Regulations) it is not considered to help enforcement as it is too detailed and prescriptive. The ASA go on to say that difficulties may arise where guidance goes beyond what is required on the face of the Regulations, or if an advert uses a creative treatment that could be in breach of a specific example used in the guidance, but the overall effect of the advertisement seems compliant with the 2007 Regulations⁵³.

224. BMA, responding on behalf of the BFLG, shares some of the views expressed by LACORS and the ASA, and is also of the opinion that it is not clear whether certain information (e.g. SMA flyer and Nestle video) being provided to the public and to health care professionals is in line with the requirements of the 2007 Regulations^{16,48}.

225. In addition, BMA on behalf of the BFLG give their view that enforcement action is not taken where there are perceived breaches⁴⁸. When commenting on why action had not been taken on some perceived breaches of the Regulations enforcement officers were reported as saying “the supply of informational and educational materials is permitted so long as the material meets the conditions listed in the Regulations”; “manufacturers will not accept that websites are advertisements unless the point is established via a successful prosecution”; “manufacturers claim to have no control over the practices of retailers.”; “[we] advised [the company] that the health claim was not permitted. [The company] maintains it is compliant [with the Regulations].”⁴⁸.

226. With the exception of the comment about the guidance notes to the 2007 Regulations, the enforcement issues cited above existed prior to the introduction of the 2007 Regulations and continue to exist now that the new controls are in force.

Summary of main findings

227. An overall view of the findings is consolidated below:

- The research findings indicate that the incidence of advertising factors that have been specifically associated with providing greater clarity of follow-on formula advertising, including images of product pack/stage and attributes associated with older infants, has increased in print advertising and decreased in television advertising. This would indicate that there has been a change in advertising between 2006 and 2008/2009. Print advertising may have become clearer, but television advertising may have become less clear.
- The research findings indicate that the legibility of text may have improved in print and television follow-on formula advertising between 2006 and 2008/2009.
- The research findings indicate that reference to “infant formula” and an “age of use recommendation” has increased in infant formula advertising in scientific publications, between 2006 and 2008/2009.
- Parents, parents-to-be and carers in the survey were shown three print advertisements and three television advertisements. Between 82 per cent (945 respondents) and 50 per cent (577 respondents) correctly stated that the age for which the advertised product was suitable was six months or over. Between 415 (36%) and 138 (12%) (depending on the advertisement being shown in the interview) were not clear. In other words, there are more parents, parents-to-be and carers in the survey, who recognised, unprompted, that advertisements for follow-on formula were for a product meant only for infants over six months of age than there were those who did not. The numbers of those who responded “don’t know” ranged from 156 (14%) to 66 (6%) depending on the advert they were shown in the interview.
- Similarly, more parents, parents-to-be and carers in the survey (between 74% and 51% of respondents) thought the impression advertisements gave of the age for which the formula was suitable was clear, than did not. The numbers of those who did not ranged between 20 per cent and 48 per cent depending on the advert they were shown in the interview. In all cases one per cent responded “don’t know”
- The findings of the survey indicate that 2.6 per cent (22 out of 816) of infants under the age of six months are being fed follow-on formula. Loyalty card data run in the same direction as this finding, (4757 households out of 147,570 (3.2%)). In the survey, in most instances, this was not because of confusion over formula products, but as a result of a considered decision to use follow-on formula early.
- The findings show that where follow-on formula is given to infants under six months of age the majority are five months old (22 out of 22 (100%)). Loyalty

card data run in the same direction as this finding, (2898 households out of 4757 (61%))

- Healthcare professionals were interviewed by telephone. Half thought infant formula and follow-on formula advertising was clear.
- Stakeholders reported the potential for the in-store presentation of infant formula and follow-on formula to cause confusion. When asked in the qualitative research parents of babies under six months of age and expectant parents reported that they did not feel there was an issue with clarity. When expectant parents were asked this question in the survey some said they had seen different infant formula types for infants of different ages in shops, and, when asked 80 per cent (157 respondents from 196) said they thought the in-store presentations were clear that some products were for babies under six months and some for babies aged over six months.
- The panel found little evidence to show one way or another if advertising of Follow on Formulas, and the co-presentation of Infant Formulas and Follow on Formulas in Retail Outlets, by way of brand extension, influenced decisions on the unrecommended use of formulas.
- Enforcement issues continue to be reported since the new controls came into force. Stakeholders reported that problems surround the way certain terms and controls in the 2007 Regulations should be interpreted and applied, in particular those relating to the content of informational and education material; the content of the guidance notes to the 2007 Regulations; and the fact that action is not taken where there were perceived breaches. With the exception of the problems with the content of the guidance notes to the 2007 Regulations, the other problems appeared before the introduction of the new controls.

Recommendations, overall findings and additional points

Overall findings

228. In reaching its conclusions and discussing its recommendations the panel paid attention to two important considerations: first, that infants constitute a vulnerable group. Self-evidently, they are dependent and not in a position to make feeding decisions for themselves and, as set out in the Convention of the Rights of the Child, have a right to be protected from economic exploitation (Committee on the Rights of the Child, 1989). The second consideration is that the 2007 Regulations set out provisions for *all* infants and their parents and carers as well as parents-to-be and they, as well as all other stakeholders, share an interest in the effective implementation of the 2007 Regulations and guidance.
229. The review has looked in detail at a very specific part of the 2007 Regulations, namely the new controls requiring the advertising and presentation of infant and follow-on formula to avoid any risk of confusion between the two products, which derive from Article 13 (7) and Article (8) in Directive 2006/141/EC.
230. In considering the objective and remit of the review, the panel also sought to maintain a balance in ensuring suitable awareness of the wider context of infant feeding and the work to be done properly to address the remit and objectives.
231. There are three parts to the panel's main and most important finding.
- The evidence and information available to the panel indicates that, to some extent, the controls are having the desired effect with most parents, parents-to-be and carers clear that advertisements for follow-on formula are meant only for babies over six months (detailed in paragraph 212 to 213 above) and are not perceived or confused as infant formula advertising, which is prohibited to the general public, it is not possible categorically to conclude that *all* are clear.
 - The potential remains for the advertising of follow-on formula to be seen as advertising infant formula.
 - Although evidence is absent as to whether or not any confusion directly leads to infants being fed follow-on formula prematurely, none the less it is not possible to conclude categorically that *no* infants are being fed follow-on formula inadvertently or prematurely.
232. The panel noted the following additional findings that address each of the four points (a)-(d) (detailed in paragraph 19) of the remit:
- in respect of point (a) of the remit, the panel found that there have been changes in the ways in which infant formula (where permitted) and follow-on formula are

presented and advertised between 2006 and 2008/2009, i.e. the periods before and after the new controls were introduced. Several of these changes may be consistent with the effectiveness of the new controls, but there remain some changes that may not be.

- in respect of point (b) of the remit, the panel found that most parents, parents-to-be and carers are clear that advertisements for follow-on formula are for products for infants older than six months of age. This leaves others who are not.
- in respect of point (c) of the remit, the panel found that some infants are being fed follow-on formula before the age of six months, most of whose parents are doing so as the result of a considered decision. Although they are likely to be a relatively small proportion of all infants, it still leaves some being fed follow-on formula prematurely with an even smaller proportion being fed follow-on formula inadvertently.
- in respect of point (d) of the remit, the panel found that although some problems reported before the introduction of the new controls continue to be reported, others are new, including specifically, problems associated with the guidance notes to the 2007 Regulations.

233. As indicated above, the panel's assessment as to whether the new controls are fulfilling their objective is that, to some extent, they are. At the same time, there remains confusion among some parents, carers and parents-to-be. Some health professionals are of the opinion that there continues to be confusion and some key stakeholders take the view that the controls are insufficiently effective.

234. The panel considers, then, that a case can be made for taking additional action in order to improve the clarity of formula advertising further. Accordingly, the panel makes the following recommendations.

Recommendations

Recommendation 1 – In order to increase the chances of achieving clarity, it is recommended that manufacturers make *all* the following changes to advertising:

- Provide text relating to age suitability in a box, in bold or underlined
- Specify, unambiguously, the age of the child for whom the product is intended in the voiceover of television advertisements
- Ensure that the infants shown in follow-on formula advertising are unambiguously aged six months and over: for example by demonstrating features such as good head and arm control; sitting upright; having hair and teeth; showing emotional facial expression; being in an outdoor environment; self-feeding
- Increase the size and enhance the clarity of product images (i.e. packshots)

Recommendation 2 – The nature of the problems encountered when enforcing the Regulations should be characterised and steps taken to address these.

Additional points noted by the panel

235. When considering the information before it the panel noted specific points, which fell outside the review objective and remit, but that the panel nevertheless judged warranted special mention. The panel wishes, therefore, to record the following points in no particular order:
236. It is evident that the factors shaping infant feeding practices are multiple and complex. The panel encourages the Department of Health and Food Standards Agency, in conjunction with other interested parties and agencies to consider the need to strengthen and ensure a full, broad, cross departmental and systematic public health strategy to promote and support breast feeding and the range of agencies which work to do so.
237. The NICE guidelines state that advice on the use of infant and follow-on formula should be available from health professionals; the qualitative research indicated that healthcare professionals did not always provide parents, carers and parents-to-be with information on formula feeding even when directly asked. This appears to result in parents, carers and parents-to-be seeking information from their peers (e.g. through internet discussion forums) or from infant formula manufacturers via company carelines.
238. The appreciation among parents, carers and parents-to-be of the age from which follow-on formula may be fed to infants is, on the whole, good. However, the research has shown that the terms “*infant formula*” and “*follow-on formula*” are not in common use, and are not immediately understood. Instead, infant formula products are often identified in relation to their apparent suitability for the first two to four months of life, and in a related but modified formulation as being suitable for the next few months after which follow on formula would be appropriate. These products are recognised as Stage 1, 2 and 3 respectively and formula manufacturers label the products accordingly. Progression along this range is seen by some as a marker of a baby’s maturity, perhaps as a badge of precocity. This issue was not evident until the panel had received the research reports, and it was unable to explore the implications of such “*staging*” in the context of its remit. Nonetheless the panel thought that the staging may represent a feeding strategy and brand extension relevant to the promotion of products. Furthermore this possibility might also derive some credibility because of the congruence between the stages and the infant age groups used for the data collection in the Department of Health quinquennial infant feeding survey. The panel thinks that these points should be borne in mind when its recommendations are considered. Additionally the potential points of confusion identified here should be taken into account by the Food Standards Agency and Department Health when communicating with consumers and health professionals respectively in the development of management and communication strategies in infant feeding.

239. Some health professionals were more concerned about premature weaning^{*****} than with the inappropriate use of follow on formula. The extent of this concern among health professionals, and the evidence on which it is based, is unknown.
240. Although advertisements have changed since the new Regulations were introduced, their influence on feeding choices cannot be predicted. Advertising may play a role in shaping infant feeding attitudes and behaviour among parents, parents-to-be and carers, the way in which it may do this (in concert with other factors) has so far been the subject of no detailed peer-reviewed research.

^{*****} See Glossary. It is not known to what extent healthcare professionals were using the strict definition of the term.

Conclusions

241. The review should be viewed in the context of the wider public health commitment to the promotion of breast feeding and its conclusions and recommendations should be considered in this light. The panel is conscious that the outcome of the review will be used to inform policy in the area of infant feeding and recognises that it will be for policy makers^{†††††} to decide whether future action is warranted.
242. Before even the panel was appointed, the conclusions of this review – and indeed any similar review – could be described as leading to one of three alternative recommendations for action:
- (i) no action.
 - (ii) bringing controls on follow-on formula into line with those on infant formula.
 - (iii) enhancing/strengthening existing controls.
243. As noted in paragraphs 231-233 above, the panel’s overall finding is that even though all evidence and information available to it indicates that, to some extent, the controls are having the desired effect, with most parents, parents-to-be and carers clear that advertisements for follow-on formula are meant only for babies over six months (detailed in paragraphs 203 - 205 above) and not confusing them with or perceiving them as infant formula advertising, which is prohibited to the general public, it is not possible categorically to conclude that *all* are clear. Therefore the panel concludes that a case cannot to be made for recommending no action. Conversely the panel spent some time considering whether there was sufficient evidence to recommend a ban on the advertising of follow-on formula and came to the conclusion there was not. As noted paragraph 241 above, whether any further action is warranted, including any ban on the advertising of follow-on formula, is a decision for policy makers, who if sufficiently concerned could consider the precautionary principle^{†††††}.

^{†††††} In line with principle 3 of the Principles for the Treatment of Scientific Advice 2009
<http://www.senseaboutscience.org.uk/index.php/site/project/421>

^{†††††} In 2000, the European Commission adopted a Communication on the use of the Precautionary Principle, which set out a number of steps to be followed. These were:

- if a preliminary scientific evaluation shows that there are reasonable grounds for concern that a particular activity might lead to damaging effects on the environment, or on human, animal or plant health, which would be inconsistent with the protection normally afforded to these within the European Community, the Precautionary Principle is triggered;
- decision-makers then have to determine what action to take. They should take account of the potential consequences of taking no action, the uncertainties inherent in the scientific evaluation, and they should consult interested parties on the possible ways of managing the risk. Measures should be proportionate to the level of risk, and to the desired level of protection. They should be provisional in nature pending the availability of more reliable scientific data;
- action is then undertaken to obtain further information enabling a more objective assessment of the risk. The measures taken to manage the risk should be maintained so long as the scientific information remains inconclusive and the risk unacceptable.

244. Having reached the conclusion that existing controls should be enhanced/strengthened the panel drew on the evidence and information available (detailed in paragraphs 196 to 226) and makes the following recommendations for how this could be achieved:

Recommendation 1 – In order to increase the chances of achieving clarity, it is recommended that manufacturers make *all* the following changes to advertising:

- Provide text relating to age suitability in a box, in bold or underlined.
- Specify, unambiguously, the age of the child for whom the product is intended in the voiceover of television advertisements
- Ensure that the infants shown in follow-on formula advertising are unambiguously aged six months and over: for example by demonstrating features such as good head and arm control; sitting upright; having hair and teeth; showing emotional facial expression; being in an outdoor environment; self-feeding
- Increase the size and enhance the clarity of product images (i.e. packshots)

Recommendation 2 – The nature of the problems encountered when enforcing the Regulations should be characterised and steps taken to address these.

Annex 1

Membership of the review panel

Professor Anne Murcott (Chair)

Professor Murcott is Honorary Visiting Professor at City University in London, Professor Emerita in Sociology at London South Bank University and Special Professor in the School of Sociology and Social Policy at the University of Nottingham. She is a past Honorary Professor in Sociology at the University of Leicester and in 2009 was awarded an honorary Doctorate by the University of Uppsala for her contribution to the sociology of food and eating. Professor Murcott is currently engaged in advisory and supervisory activity focusing on research management in both academic and wider public sector settings.

Professor Murcott served as a member of the Food Standards Agency's Advisory Committee on Research, was appointed a member of the Agency's General Advisory Committee on Science in December 2007 and in 2008 - 2009 served as a member of the Steering Panel for the Government Office for Science's Review of the Food Standards Agency. As a senior academic, Professor Murcott built up many years' committee experience, including taking the chair both within the university sector and on behalf of learned societies. Over the last 15 years she has extended this type of work as a member of various committees concerned with research and with the use of science in policy and practice.

Professor Peter Aggett

Professor Aggett is past Head of the Lancashire School of Health and Postgraduate Medicine and Emeritus Professor of Child Health and Nutrition at the University of Central Lancashire. Professor Aggett is present on the panel to provide expertise in infant nutrition. Professor Aggett has been a member of a number of Department of Health, Ministry of Agriculture Fisheries and Food and Food Standards Agency advisory committees and is currently a member of the Scientific Advisory Committee on Nutrition (SACN) and the Subgroup on Maternal and Child Nutrition (SMCN), having previously served on the Department of Health Committee on the Medical Aspects of Food Policy (COMA) for which he chaired in 1996 a report on the "*Nutritional assessment of infant formulas*". He has been chair of the Committee on Nutrition of the European Society of Paediatric Gastroenterology, Hepatology and Nutrition (ESPGHAN) and has chaired the Standing Committee on Nutrition for the Royal College of Paediatrics and Child Health. He has served on nutrient requirement and risk assessment advisory bodies for the WHO, FAO, IAEA, IPCS and European Commission.

Adam Crosier

Adam Crosier is Director of Word of Mouth Research. Until recently he was Research Director at the National Social Marketing Centre, where he helped to establish programmes of research on public understandings of health inequalities and on supporting the adoption of social marketing across government and the NHS. He has

extensive experience of social marketing, having contributed to a wide range of health improvement interventions at the Health Education Authority and the Health Development Agency. Adam has knowledge of a wide range of public health areas including food and nutrition, with his main area of interest being public policy to reduce social inequalities in health. He commissioned the programme of research to inform the development and evaluation of the influential Big Smoke Debate.

Professor Elizabeth Dowler

A Registered Public Health Nutritionist, who conducts research on the social, policy and political dimensions of food and human nutrition. In recent years her main areas of research have been on the role of food and nutrition in mediating inequalities in health, in definition and measurement of poverty, and evaluation of policy intervention at local and national level. She previously worked at the London School of Hygiene and Tropical Medicine and in 2000 moved to social policy within sociology at the University of Warwick, where she is currently based. She was also a member of the external evaluation panel, Scottish Diet Action Plan 1996-2005, for Health Scotland; she was a member of the national Institute for Health and Clinical Excellence (NICE) Programme Development Group, Maternal and Child Nutrition Guidelines; she is a member and Trustee of the Food Ethics Council; and, since December 2008, has been a member of the Defra Council of Food Policy Advisers.

Uisdean Maclean

Was director of the Broadcast Advertising Clearance Centre, now Clearcast, who were responsible for the pre-transmission examination and clearance of television advertisements against the Broadcast Committee of Advertising Practice's Television Advertising Standards Code. Mr Maclean is now a consultant in this field and recently carried out a review of compliance with the Advertising Standards Authority's alcohol advertising codes.

Annex 2 Timeline of the review

Date	Review milestone
8 th January 2008	Department of Health and Food Standards Agency meet with key stakeholders to discuss remit of review, review process and composition of review group.
April 2008	Food Standards Agency seeks stakeholder views on proposed panel members.
8 th May 2008	The membership of the independent panel is announced
5 th June 2008	First meeting of the independent panel - panel establishes evidence and information required and timetable for the review
13 th June 2008	Key stakeholders are asked to submit existing material for the panel to consider.
11 th July 2008	Second meeting of the independent panel – the panel meets with key stakeholders to hear views on the research design and material to be submitted. The panel then agrees the research specifications.
July/August 2008	The specifications for the research to be commissioned to inform the review are advertised by the Food

	Standards Agency and Central Office for Information.
29 th August 2008	Closing date for research proposals.
5 th September 2008	Closing date for key stakeholders to submit existing material.
11 th September 2008	Third meeting of the independent panel – The panel considers research proposals and agrees the successful applicants.
Autumn 2008	Research to inform the review commences.
9 th October 2008	Fourth meeting of the independent panel – the panel considers the material submitted by key stakeholders.
5 th February 2009	Fifth meeting of the independent panel – the panel is provided with an update on research and agrees additional questions to be asked of key stakeholders.
9 th February 2009	Key stakeholders are asked to answer specific questions and submit any further material they feel is relevant to the review.
27 th March 2009	Closing date for key stakeholders to submit material.

24 th April 2009	Sixth meeting of the independent panel – The panel considers all material submitted by key stakeholders.
May 2009	The panel agrees to the commissioning of loyalty card analysis.
29 th June 2009	Seventh meeting of the independent panel – the panel is presented with the results of the research
5 th August 2009	Eighth meeting of the independent panel – the panel is presented with the findings of the loyalty card analysis. The panel discusses and agrees its conclusions and recommendations.
8 th September 2009	Key stakeholders are asked to comment on whether the panel has accurately represented the material submitted in the draft final report.
2 nd October 2009	Closing date for stakeholder comments on the draft final report.
29 th October 2009	Ninth meeting of the independent panel - panel agrees final conclusions and recommendations.
February 2010	The final report of the review presented to the minister.

Annex 3

Key stakeholder organisations

Advertising Association
Advertising Standards Authority
Baby Feeding Law Group
Baby Milk Action
Breastfeeding Manifesto Coalition
Breastfeeding Network
British Dietetic Association
British Retail Consortium
Buckinghamshire Trading Standards (Home authority for SMA Nutrition)
Caroline Walker Trust
Community Practitioners' and Health Visitors' Association
Croydon County Council (Home authority for Nestle)
FTSE
Health Promotion Agency Northern Ireland
Hipp UK Limited
H J Heinz
Infant and Dietetic Foods Association
LACORS
La Leche League
London Borough of Hillingdon (Home authority for Heniz)
Midwives Information and Resource Service (MIDIRS)
National Childbirth Trust
National Institute of Clinical Excellence
Nutricia
Nutrition Society
Periodical Publishers Association
Royal College of Midwives
Royal College of Nursing
Royal College of Obstetricians and Gynaecologists
Save the Children
Scientific Advisory Committee on Nutrition
SMA Nutrition
The Breastfeeding Network
The Royal College of General Practitioners
The Royal College of Paediatrics and Child Health
UNICEF
UNISON
Unite the union
Welsh Assembly
West Berkshire Trading Standards (Home authority for Hipp)
Wiltshire County Council (Home authority for Nutricia)

Annex 4

Specification for project one: Nature of advertising and presentation

1. INTRODUCTION

- 1.1 The Food Standards Agency and Department of Health wish to commission research to establish the nature of infant formula and follow-on formula advertising and presentation, both before and after the introduction of new controls^{§§§§§}.

2. BACKGROUND

- 2.1 The Department of Health is committed to the promotion of breast feeding, which is accepted as the ideal form of nutrition for infants to ensure a good start in life. Breast feeding confers significant short-term health benefits to both mother and baby. Some mothers do not breast feed and in these cases infant formula can be used as an alternative to breast milk from birth onwards. The advertising of infant formula to the general public is totally prohibited, however restricted advertising within scientific publications (such as those for healthcare professionals) is permitted. If the mother chooses to use follow-on formula, it should only be given to infants from six months of age. Subject to controls the advertising of follow-on formula is permitted.
- 2.2 On 21 November 2007 Dawn Primarolo, the Minister of State for Public Health, announced new controls on the composition, labelling, presentation, advertising and promotion of infant formula and follow-on formula. These controls (Regulations implementing Commission Directive 2006/141/EC and associated guidance) update compositional requirements for infant formula and follow-on formula based on recent scientific advice and provide new, stronger rules on labelling, advertising and promotion in order to ensure that breast feeding is not undermined.
- 2.3 When the Minister announced the new controls^{*****} she made a commitment to reviewing their effect. The review is to examine whether, as a result of the new controls on advertising and presentation, there is a clear distinction between infant formula and follow-on formula in consumers' minds. An independent Review Panel has been set up, comprising a small group of independent experts in infant nutrition, health inequalities, marketing and consumer perception and behaviour,

^{§§§§§} The joint commissioning of this project is due to the complementary interests of Food Standards Agency and Department of Health in this area. Specifically, the responsibility of Department of Health for infant feeding policy and Food Standards Agency for the legislation controlling infant and follow-on formula.

^{*****} The Infant Formula and Follow-on Formula Regulations 2007 (http://www.opsi.gov.uk/si/si2007/uksi_20073521_en_1) and the associated guidance notes (<http://www.food.gov.uk/multimedia/pdfs/infformguide2007.pdf>)

chaired by Professor Anne Murcott. The Review Panel will assess whether the new controls are fulfilling their objectives or whether further action is needed and, if so, what future action may be appropriate. Further details about the review can be found on the Food Standards Agency's website at:

www.food.gov.uk/healthiereating/nutcomms/infformreview/

3. OBJECTIVE AND REMIT OF THE INDEPENDENT REVIEW

3.1 The objective of the review is to assess whether the new controls upon the ways in which follow-on formula are presented and advertised have been effective in making it clear to parents, parents-to-be and carers that advertisements for follow-on formula are meant only for babies over six months and are not perceived or confused as infant formula advertising, which is prohibited.

3.2 The remit of the review is to assess whether the new controls are fulfilling their objectives or whether further action is needed and, if so, what future action may be appropriate. The review will specifically answer the following points;

- Establish the effect of the new controls on the ways in which infant formula and follow-on formula are presented and advertised.
- Establish whether consumers are clear that presentation of, and advertising of, follow-on formula relates to formula for older babies and not to infant formula.
- Establish if infants under six months of age are being fed follow-on formula and if so the reasons why.
- Identify any enforcement issues which have arisen since the new controls came into force.

4. RESEARCH

4.1 The Food Standards Agency and Department of Health now wish to commission two pieces of research on behalf of the independent review panel to underpin the evidence for this review. One piece of research is on the ways in which infant formula and follow-on formula are presented and advertised and is the subject of this specification. Further details are provided below, with a summary of the information to be included within the tender. A separate tender is being carried out for the other piece of research.

5. RESEARCH OBJECTIVES

5.1 To establish the effect of the new controls on the ways in which infant and follow-on formula are presented and advertised and in particular:

- To provide an accurate representation of infant formula and follow-on formula advertising and presentation before and after the new controls were introduced.
- Analyse the content of such advertising and the nature of presentation to establish if these changed following the introduction of the new controls.

6. RESEARCH PROPOSAL, DESIGN AND METHODS

- 6.1 Tenderers are invited to propose a detailed description of the approach they recommend to meet the objectives of the research, including a full justification of the proposed methods. The proposal should include details of all assumptions on which the proposal and associated costs are based.
- 6.2 The proposal should include a justified design, methods and content analysis plan that will be agreed by the Food Standards Agency, Department of Health and the panel.
- 6.3 However, it is expected that the proposal and research design will include:
- a literature review of existing evidence (a) to provide a contextual background for the study (b) identify the different elements of advertising and presentation which could affect consumers' perception and understanding and (c) which should be considered when later analysing content . It is anticipated that this element of the research will be undertaken by an expert in the analysis of media, marketing, or advertising;
 - establishing the different media and means by which infant formula and follow-on formula is advertised and presented and provide a breakdown of the weight of advertising in each media (see paragraph 6.5 for further information on the different media);
 - gather creative information on the advertising and presentation of infant formula and follow-on formula by sampling monitoring outputs/databases using a systematic and robust approach. This is to be collected and presented in a way that allows the content of the advertisements and the way in which infant and follow-on formula are presented to be analysed;
 - analyse the content of advertising and the way in which infant and follow-on formula are presented to establish if this has changed following the introduction of the new controls. This analysis should include elements of the content such as logos, branding, product name, design, layout, colour scheme, use of imaging, symbols, shapes, sound, wording, text and the proportion of space used for each of these. It is expected that this element of the research will also be undertaken by an expert in the analysis of media, marketing, or advertising.
- 6.4 The research must establish an accurate picture of advertising and presentation both before and after the new controls were introduced. The Commission Directive 2006/141/EC was published on 22nd December 2006 and interested parties will have been aware of the new controls from this time, as a result the before period should be pre December 2006. Tenderers are invited to propose a detailed description of how this would be achieved, in particular how any variation in advertising throughout the calendar year will be taken into account.
- 6.5 The advertising media covered must be as inclusive as possible. Tenderers are invited to suggest which advertising media could be within the scope of this research. Food Standards Agency guidance on what could be considered as

advertising is provided in Appendix I of the Food Standards Agency's guidance notes on the infant formula and follow-on formula Regulations 2007:

www.food.gov.uk/multimedia/pdfs/infformguide2007.pdf

- 6.6 However, at a minimum, the following must be included:
- TV (including sponsorship)
 - Radio
 - Print media including magazines and newspapers. Scientific publications for both infant and follow-on formula advertising.
 - Cinema Commercials
 - Outdoor posters and other promotional materials in public places, including moving images e.g. in hospitals.
 - New media including the internet and websites.
 - Direct mail
 - In-store including on shelf and off shelf stand alone displays.
 - Tenderers should consider the Chartered Institute of Marketing definition of "*promotional mix*"^{††††††}
- 6.7 When proposing methods for data collection consideration should be given to representing both national and regional media. Data collection within stores should take account of different retail environments including rural, suburban and city.

7. SCOPE

- 7.1 The research must cover the whole of the United Kingdom (England, Wales, Scotland and Northern Ireland) as the Regulations apply to each county. It should be possible to establish if the nature of advertising and presentation differs by country.

8. OUTPUTS

- 8.1 The delivery of regular interim findings is an essential requirement. Outputs and their expected delivery dates must be specified in the research proposal.
- 8.2 The following outputs are required:
- Brief written monthly reports on the progress of the project against the agreed project plan and identification of any emergent issues
 - Reports and summaries of interim findings at appropriate stages in the research

^{††††††} Promotional Mix is defined as: The components of an individual promotional campaign, which are likely to include advertising, personal selling, public relations, direct marketing, packaging, and sales promotion.

- Draft final report and summary
 - Presentation of draft final report to officials and the review panel
 - Final report and standalone summary
- 8.3 The final report and summary, plus interim reports and summaries, must be proof-read, written in plain English and of publishable standard.
- 8.4 Any quantitative data submitted electronically must be in MS Excel or SPSS (including syntax). Tables, charts and graphs contained in written reports must be inserted as Excel workbooks or delivered on a disc that clearly labels the data and corresponding charts and graphs in the report.

9. MANAGEMENT

- 9.1 The tenderer will be required to appoint a Contract Manager who will be fully accountable for the delivery of the project against the contract. They will be required to liaise closely with the nominated project officer, Clare Lowrie (Food Standards Agency), and provide regular verbal updates on progress and issues arising. The contractor will be required to meet with the Food Standards Agency, Department of Health and possibly the panel, at the start of the project to discuss the proposed approach. The tenderer must also build in sufficient time within the research timetable for consultation, via the nominated project officer, with Food Standards Agency, Department of Health and the panel on all significant matters and outputs. The Food Standards Agency, Department of Health and the panel must be given the opportunity to agree all proposed work plans.
- 9.2 In addition, the Food Standards Agency and Department of Health will report to, and receive advice from the independent review panel throughout the duration of the research and the timetable must allow for this. The successful contractor will also be required to present interim and final research findings to the review panel. Tenderers must therefore cost on the basis of attending and formally presenting at two review panel meetings.
- 9.3 Tenderers should note that the Food Standards Agency and Department of Health intend to peer review the final report, in accordance with good scientific research governance practice.

10. PROJECT TEAM / STAFFING

- 10.1 The project requires contractors to have in place and provide a team with a proven track record of knowledge, skills and expertise of related research. Good investigative and analytical skills are required, as is the proven ability to report in writing and orally in plain, concise English.
- 10.2 The proposal must include information about the personnel who would be involved with the project, their grade, daily rate, number of days' input on the different elements of the study, relevant skills and experience (including brief CVs). This must include the role they would take in the project team, including

who would be drafting reports, and details of which team member would act as the tenderer's Contract Manager.

- 10.3 It is expected that certain elements of the research will be undertaken by an expert in the analysis of media, marketing or advertising.
- 10.4 If sub-contractors are to be employed this must be made clear in the tender along with full details of experience in the techniques or services proposed.

11. PERFORMANCE AND QUALITY

- 11.1 Tenderers must provide a quality plan demonstrating their internal quality assurance procedures and how they will achieve high quality outputs to time and to budget.

12. TIMETABLE

- 12.1 The research should commence by mid October 2008 and must complete in mid July 2009 in order to meet the timetable set by the Minister.
- 12.2 Tenderers should outline the key stages in their overall approach for meeting the timetable below:

Task	Date
Initiation meeting	Mid October 2008
Submission of draft final report and summary to the panel and external appraiser.	Mid June 2009
Submission of final report and summary	Mid July 2009

13. PROGRAMME OF WORK

- 13.1 Tenderers are required to submit a programme of work that is supported by a detailed project plan. This must be accompanied by a breakdown of the resources in person-days allocated to each task, identifying the contribution of key team members (a resource profile). The programme of work must identify key milestones within the project, which can be linked to progress reviews, and payments for completion of work. It should also identify likely dates for meetings with officials and the review panel.

14. COSTS

- 14.1 Tenderers must ensure that the costs of presentations and meetings are included in the costs.
- 14.2 A breakdown of costs is required for any sub-contractor proposed for the project
- 14.3 Tenderers must provide costs exclusive of VAT, and state whether VAT will be charged.
- 14.4 Tenderers must provide costs for the research design proposed in section six (above), as well as for any alternative recommended design.

15. PAYMENT

- 15.1 Payment of invoices will be based on the achievement of key milestones / deliverables. Tenderers must propose an appropriate invoicing schedule to reflect this.

16. ASSESSMENT CRITERIA

- 16.1 Tenders will be judged by:
- How well they address the research objectives
 - The appropriateness of the proposed design and methods
 - The relevant experience of the research team
 - The robustness of the proposed project management team and quality assurance arrangements
 - Ability to deliver well written, high quality, user-friendly outputs
 - Value for money
- 16.2 All these criteria are equally important and will be given equal weight in the assessment process.

17. FURTHER INFORMATION

- 17.1 Further information on this project can be obtained from:

Clare Lowrie
Nutrition Division
Food Standards Agency
020 7276 8169
Clare.lowrie@foodstandards.gsi.gov.uk

Minimum information to be included within the tender

- Proposal title and working title
- Lead contractor's contact details
- Summary of proposal
- Objectives
- Estimated costs
- Approaches and research plan including the justification for design and methods to be used.
- Clear description of how the proposed approach meets the project's objectives.
- Project milestones
- Project deliverables
- Role of any participants (such as sub-contractors)
- Project management
- Breakdown of costs by staff, investigators, travel and subsistence, Equipment, other costs.

Project team/staffing, with individual responsibilities in this project.

Annex 5

Specification for project two: Effectiveness of the controls

1. INTRODUCTION

- 1.1 The Food Standards Agency and Department of Health wish to commission research to investigate the effect of the new controls on infant formula and follow-on formula on parents' / carers' perception, understanding and use of formula^{*****}.

2. BACKGROUND

- 2.1 The Department of Health is committed to the promotion of breast feeding, which is accepted as the ideal form of nutrition for infants to ensure a good start in life. Breast feeding confers significant short-term health benefits to both mother and baby. Some mothers do not breast feed and in these cases infant formula can be used as an alternative to breast milk from birth onwards. The advertising of infant formula to the general public is totally prohibited however restricted advertising within scientific publications (such as those for healthcare professionals) is permitted. If a mother chooses to use follow-on formula, it should only be given to infants from six months of age. Subject to controls the advertising of follow-on formula is permitted.
- 2.2 On 21 November 2007 Dawn Primarolo, the Minister of State for Public Health, announced new controls on the composition, labelling, presentation, advertising and promotion of infant formula and follow-on formula. These controls (Regulations implementing Commission Directive 2006/141/EC and associated guidance) update compositional requirements for infant formula and follow-on formula based on recent scientific advice and provide new, stronger rules on labelling, advertising and promotion in order to ensure that breast feeding is not undermined.
- 2.3 When the Minister announced the new controls^{§§§§§§} she made a commitment to reviewing their effect. The review is to examine whether, as a result of the new controls on advertising and presentation, there is a clear distinction between infant formula and follow-on formula in consumers' minds. An independent review panel has been set up, comprising a small group of independent experts in infant nutrition, health inequalities, marketing and consumer perception and behaviour, chaired by Professor Anne Murcott. The review panel will assess whether the new

^{*****} The joint commissioning of this project is due to the complementary interests of Food Standards Agency and Department of Health in this area. Specifically, the responsibility of Department of Health for infant feeding policy and Food Standards Agency for the legislation controlling infant and follow-on formula

^{§§§§§§} The Infant Formula and Follow-on Formula Regulations 2007 (http://www.opsi.gov.uk/si/si2007/uksi_20073521_en_1) and the associated guidance notes (<http://www.food.gov.uk/multimedia/pdfs/infformguide2007.pdf>)

controls are fulfilling their objectives or whether further action is needed and, if so, what future action may be appropriate. Further details about the review can be found on the Food Standards Agency's website at:

www.food.gov.uk/healthiereating/nutcomms/infformreview/

Objective and remit of the independent review

- 2.4 The objective of the review is to assess whether the new controls upon the ways in which follow-on formula are presented and advertised have been effective in making it clear to parents, parents-to-be and carers that advertisements for follow-on formula are meant only for babies over six months and are not perceived or confused as infant formula advertising, which is prohibited.
- 2.5 The remit of the review is to assess whether the new controls are fulfilling their objectives or whether further action is needed and, if so, what future action may be appropriate and is to specifically answer the following points;
- Establish the effect of the new controls on the ways in which infant formula and follow-on formula are presented and advertised.
 - Establish whether consumers are clear that presentation of, and advertising of, follow-on formula relates to formula for older babies and not to infant formula.
 - Establish if infants under six months of age are being fed follow-on formula and if so the reasons why.
 - Identify any enforcement issues which have arisen since the new controls came into force.

Research

- 2.6 At the request of the independent review panel the Food Standards Agency and Department of Health now wish to commission two pieces of research to support this review. One piece of research will assess whether infants under six months are being fed follow-on formula and if so the reasons why and whether consumers are clear that the presentation of, and advertising of, follow-on formula relates to formula for older babies and not infant formula. Further details are provided below, with a summary of the information to be included within the tender. A separate invitation to tender is being carried out for the other piece of research. If you would like further information regarding the other piece of research please go to:

www.food.gov.uk/aboutus/how_we_work/procurement/contractnoticeinfantformula

3. RESEARCH OBJECTIVES

- 3.1 The key objectives of this piece of research are to:
- assess whether infants under six months are being fed follow-on formula and if so, the reasons why;
 - assess whether the new controls upon the ways in which follow-on formula are presented and advertised have been effective in making it clear to all those likely to be involved in child care including parents, formal and informal carers, health professionals and parents-to-be, that advertisements for follow-on formula relate

- to formula only for older babies (6 months plus), and are not perceived as, or confused with infant formula advertising, which is prohibited and;
- based upon this evidence, draw conclusions about what changes, if any, could be made to the presentation and advertising of infant / follow-on formula, for consideration by the review panel.

4. RESEARCH PROPOSAL, DESIGN AND METHODS

4.1 Tenderers are invited to propose a detailed description of the approach they recommend to meet the objectives of the research, including a full justification of the proposed methods. The proposal should include details of all assumptions on which the proposal and associated costs are based.

4.2 However, it is expected that the proposal will include:

- a literature review of existing evidence, to include academic peer-reviewed social scientific research on infant feeding and the broader context of parenting, of the family and of childcare. It should also include other literature for example the NCT / UNICEF follow-on milk advertising survey (2005); Department of Health Attitudes to Feeding survey (2005); the Infant Feeding Study (2005) and the Millennium Cohort Study. The purpose of this literature review is to provide a contextual background for the study to identify what factors influence infant / child feeding and to identify any key groups of parents / carers that the study may wish to particularly focus on. It is expected that this element of the research will be undertaken by an academic expert in the social scientific investigation of child feeding, health, parenting and the family
- a survey to establish if infants under six months of age are being fed follow-on formula and if so the reasons why and to identify whether there is any confusion surrounding the advertising and presentation of infant / follow-on formula.
- a qualitative element to provide detailed understanding of how and why parents / carers perceive and understand advertising and presentation of follow-on formula in the way that they do, and how such understanding might affect the feeding of the infant / child.

Sampling

4.3 Tenderers are invited to advise on an appropriate sample size (see Scope, below) and how data will be weighted for non-response and other design effects.

4.4 Tenderers should propose sampling strategies and identify any bias that may be present. Tenderers should bear in mind that access to government data (e.g. child benefit records) is now prohibited for security reasons. We are, however, currently investigating whether ONS's register of births is available as a possible sampling frame.

5. SCOPE

- 5.1 The research should cover the whole of the United Kingdom (England, Wales, Scotland and Northern Ireland) as the Regulations apply to each country.
- 5.2 The research should cover parents, carers (for example grandparents, registered childminders, and unpaid childminders), prospective parents and health professionals (for example midwives, health visitors and GPs). In order to achieve robust evidence we are keen to get a representative sample e.g. by region, age, gender, ethnicity, socio-economic status, marital status and family make-up (1 child, more than one child, age of children). We recognise, however, the challenging nature of this study and the necessity to limit the sample size to a manageable level. Tenderers are therefore invited to make proposals regarding the sample size for each stage of the fieldwork, as well as how to incorporate sub-groups.

6. ANALYSIS

- 6.1 Tenderers should outline their approach to analysing the data and how they will draw the different strands of evidence together. The successful tenderer will be required to submit their plans for analysis for consideration and agreement by the review panel and officials from Food Standards Agency and Department of Health.

7. OUTPUTS

- 7.1 The delivery of regular interim findings is an essential requirement. Output and their expected delivery dates should be specified in the research proposal.
- 7.2 The following outputs are required:
- Brief written monthly reports on the progress of the project against the agreed project plan and identification of any emergent issues
 - Reports and summaries of interim findings at appropriate stages in the research
 - Draft final report and summary
 - Powerpoint presentation of draft final report to officials and the review panel
 - Final report and standalone summary
- 7.3 The final report and summary, plus interim reports and summaries, should be proof-read, written in plain English and of publishable standard.
- 7.4 Any quantitative data submitted electronically should be in MS Excel or SPSS (including syntax). Tables, charts and graphs contained in written reports should be inserted as Excel workbooks or delivered on a disc that clearly labels the data and corresponding charts and graphs in the report.

8. MANAGEMENT

- 8.1 The tenderer will be required to appoint a Contract Manager who will be fully accountable for the delivery of the project against the contract. They will be

required to liaise closely with the nominated project officer, Clare Lowrie (Food Standards Agency), and provide regular verbal updates on progress and issues arising. The contractor will be required to meet with the Food Standards Agency, Department of Health and possibly the panel, at the start of the project to discuss the proposed approach. The tenderer should also build in sufficient time within the research timetable for consultation, via the nominated project officer, with Food Standards Agency, Department of Health and the review panel on all significant matters and outputs. The Food Standards Agency, Department of Health and the panel must be given the opportunity to agree all proposed work plans.

- 8.2 In addition, the Food Standards Agency and Department of Health will report to, and receive advice from the independent review panel throughout the duration of the research and the timetable must allow time for this. The successful contractor will also be required to present interim and final research findings to the review panel. Tenderers should therefore cost on the basis of attending and formally presenting at two review panel meetings.
- 8.3 Tenderers should note that the Food Standards Agency and Department of Health intend to peer review the final report, in accordance with good scientific research governance practice, and any comments made may need to be reflected.

9. PROJECT TEAM / STAFFING

- 9.1 The project requires contractors to have in place and provide a team with a proven track record of knowledge, skills and expertise of related research. Good investigative and analytical skills are required, as is the proven ability to report in writing and orally in plain, concise English.
- 9.2 The proposal should include information about the personnel who would be involved with the project, their grade, daily rate, number of days' input on the different elements of the study, relevant skills and experience (including brief CVs). This should include the role they would take in the project team, including who would be drafting reports, and details of which team member would act as the tenderer's Contract Manager.
- 9.3 It is expected that certain elements of the research will be undertaken by an expert in the social scientific investigation of child feeding, health, parenting and the family.
- 9.4 If sub-contractors are to be employed this should be made clear in the tender along with full details of experience in the techniques or services proposed.

10. PERFORMANCE AND QUALITY

- 10.1 Tenderers should provide a quality plan demonstrating their internal quality assurance procedures and how they will achieve high quality outputs to time and to budget.

11. TIMETABLE

- 11.1 The research should commence by October 2008 and must complete in July 2009 in order to meet the timetable set by the Minister.
- 11.2 Tenderers should outline the key stages in their overall approach for meeting the timetable below:

Task	Date
Date for return of tenders	<i>tbc</i>
Proposed date for presentation by short-listed tenderers and interview by the panel	11 th September 2008
Inception meeting	October 2008
Submission of draft final report and summary to the panel and external appraiser.	Mid June 2009
Submission of final report and summary	Mid July 2009

12. PROGRAMME OF WORK

- 12.1 Tenderers are required to submit a programme of work that should be supported by a detailed project plan. This should be accompanied by a breakdown of the resources in person-days allocated to each task, identifying the contribution of key team members (a resource profile). The programme of work should identify key milestones within the project, which can be linked to progress reviews, and payments for completion of work. It should also identify likely dates for meetings with officials and the review panel.

13. BUDGET

- 13.1 A tentative budget in the order of £500k has been proposed for conducting the whole Review, including both pieces of research requested by the review panel (i.e. Project one regarding the nature of infant and follow-on formula advertising and presentation before and after the Regulations came into force, and this specification / Project two regarding a review of the effectiveness of the controls on infant formula & follow-on formula), spread across financial year 2008/2009 and 2009/2010.

14. COSTS

- 14.1 Tenderers should ensure that the costs of presentations and meetings are included in the costs.
- 14.2 A breakdown of costs is required for any sub-contractor proposed for the project
- 14.3 Tenderers should provide costs exclusive of VAT, and state whether VAT will be charged.

14.4 Tenderers should provide costs for the research design proposed in section six (above), as well as for any alternative recommended design.

15. PAYMENT

15.1 Payment of invoices will be based on the achievement of key milestones / deliverables. Tenderers should propose an appropriate invoicing schedule to reflect this.

16. ASSESSMENT CRITERIA

16.1 Tenders will be judged by:

- How well they address the research objectives
- The appropriateness of the proposed design and methods
- The relevant skills and experience of the research team
- The robustness of the proposed project management team and quality assurance arrangements, including the identification of any risks and how these will be managed and overcome
- A proven track record of delivering well written, high quality, user-friendly outputs to time and budget
- Value for money.

16.2 All these criteria are equally important and will be given equal weight in the assessment process.

17. FURTHER INFORMATION

17.1 Tenderers are encouraged to discuss the review, its remit, together with the research with:

Clare Lowrie
Nutrition Division
Food Standards Agency
020 7276 8169
Clare.lowrie@foodstandards.gsi.gov.uk

Annex 6

Specification project three: Loyalty Card Data

INTRODUCTION

The Food Standards Agency and Department of Health are considering commissioning the analysis of loyalty card data. This analysis would be used to support the independent review of the controls on infant formula and follow-on formula. Background information about the review is provided as Annex I.

The independent panel tasked with carrying out the review has agreed that the possibility of using loyalty card data to inform its recommendations should be explored. The objective of considering this data is that it could provide an oblique measure of whether infants under six months of age are being fed follow-on formula and if so how many. This would be done by comparing the purchase of follow-on formula with information about the age of infants in the household and/or purchase of products which may indicate this.

OBJECTIVES OF THE ANALYSIS

To compare purchase of follow-on formula with information held on the age of infants in the household and/or with the purchase of key products that would indicate the age of infants in that household, for example nappies of a particular size.

PROPOSAL

The proposal should include the following information as a minimum. The proposal must also include details of all assumptions on which it and associated costs are based.

1. DATA HELD

1.1 The proposal should include the following details about the loyalty card data held.

- The number of members
- The number of active members
- The number of members purchasing follow-on formula
- Whether the data represents England, Scotland, Wales and Northern Ireland, whether the data can be disaggregated by region and if so the number of active members in each region.
- How representative the data are of the UK in terms of age, gender, ethnicity and socio-economic status.

1.2 Details of any restrictions on the independent panel, Food Standards Agency or Department of Health using and publishing the results of the analysis.

2. DESIGN AND METHODS

2.1 The proposal should include a range of different approaches that would meet the objective of the analysis. The different approaches should reflect the different

- analysis techniques possible, from simple two product analyses to more extensive analyses including card holder details or purchasing history.
- 2.3 In its simplest form the suggested approach should involve the comparison of follow-on formula purchase with information held on the age of children in the household and/or comparison with purchase of one or more products indicative of a younger infant, for example smaller nappies. The panel will expect to see justified suggestions for comparator products.
 - 2.4 For each of the different approaches a detailed description should be provided, together with an explanation of the benefits, any limitations and the assumptions that would have to be made. It must also be clear how the proposed approaches meet the project's objectives.
 - 2.5 The proposal should include comments on the limitations on the way this analysis can be carried out and any limitations on the extent to which the results can be interpreted.
- 3. COSTS**
- 3.1 Estimated costs for each of the different approaches proposed must be provided, together with a breakdown of those costs by staff, travel and subsistence, equipment and other costs as applicable.
 - 3.2 The costs stated in the proposal must include the costs of presenting the draft final report of the work to the independent review panel. The costs of presenting should be separated from the costs of the analysis.
 - 3.3 Costs must be provided exclusive of VAT, and state whether VAT will be charged.
- 4. PROGRAMME OF WORK**
- 4.1 The proposal must include a timeline, which includes any milestones and/or deliverables.
 - 4.2 The proposal must include details of how the Food Standards Agency will be kept informed of progress against this timeline.
 - 4.3 The proposal must include details of the project management arrangements in place to ensure delivery of the project against the contract.
 - 4.4 The proposal should include a quality plan demonstrating the internal quality assurance procedures and how they will achieve high quality outputs to time and to budget.
- 5. PROJECT STAFFING**

- 5.1 The proposal must include a named Contract Manager who will be fully accountable for the delivery of the project against the contract. They will be required to liaise closely with the nominated project officer, Clare Lowrie (Food Standards Agency).
- 5.2 The proposal must include the role of all participants. This should include details of sub-contractors, if applicable, and details of the team/staffing, with their individual responsibilities.
- 5.3 The project requires contractors to have in place and provide a team with a proven track record of knowledge, skills and expertise of related analysis. Good investigative and analytical skills are required, as is the proven ability to report in writing and orally in plain, concise English.

OUTPUTS

At the end of analysis the following outputs will be expected:

- Draft final report and summary
- Possible oral presentation of draft final report to officials and the review panel
- Final report and standalone summary

The draft report and summary must include the following:

- An executive summary.
- Details of the methodology used and the rationale, including any assumptions or limitations.
- The number of customers included in the analysis, details of their demographic breakdown and an indication of how representative this is of the UK population.
- The results of the analysis.
- Conclusions about the age or possible age of infants in the household and follow-on formula purchase.

The final report and summary must be proof-read, written in plain English and of a publishable standard.

Any quantitative data submitted electronically must be in MS Excel or SPSS (including syntax). Tables, charts and graphs contained in written reports must be inserted as Excel workbooks or delivered on a disc that clearly labels the data and corresponding charts and graphs in the report.

TIMETABLE

The research should commence after 1st April 2009 and must be completed by mid July 2009 in order to meet the timetable set by the Minister.

PAYMENT

Payment of invoices will be based on the achievement of key milestones / deliverables or the submission of the final report. An appropriate invoicing schedule must be provided to reflect this.

15. ASSESSMENT CRITERIA

15.1 Proposals will be judged by:

- How well they address the objectives
- The appropriateness of the proposed design and methods
- The relevant experience of the research team
- The robustness of the proposed project management team and quality assurance arrangements
- Ability to deliver well written, high quality, user-friendly outputs
- Value for money

15.2 All these criteria are equally important and will be given equal weight in the assessment process.

15.3 It is possible that having reviewed all the proposals the review panel will decide not to take forward this work

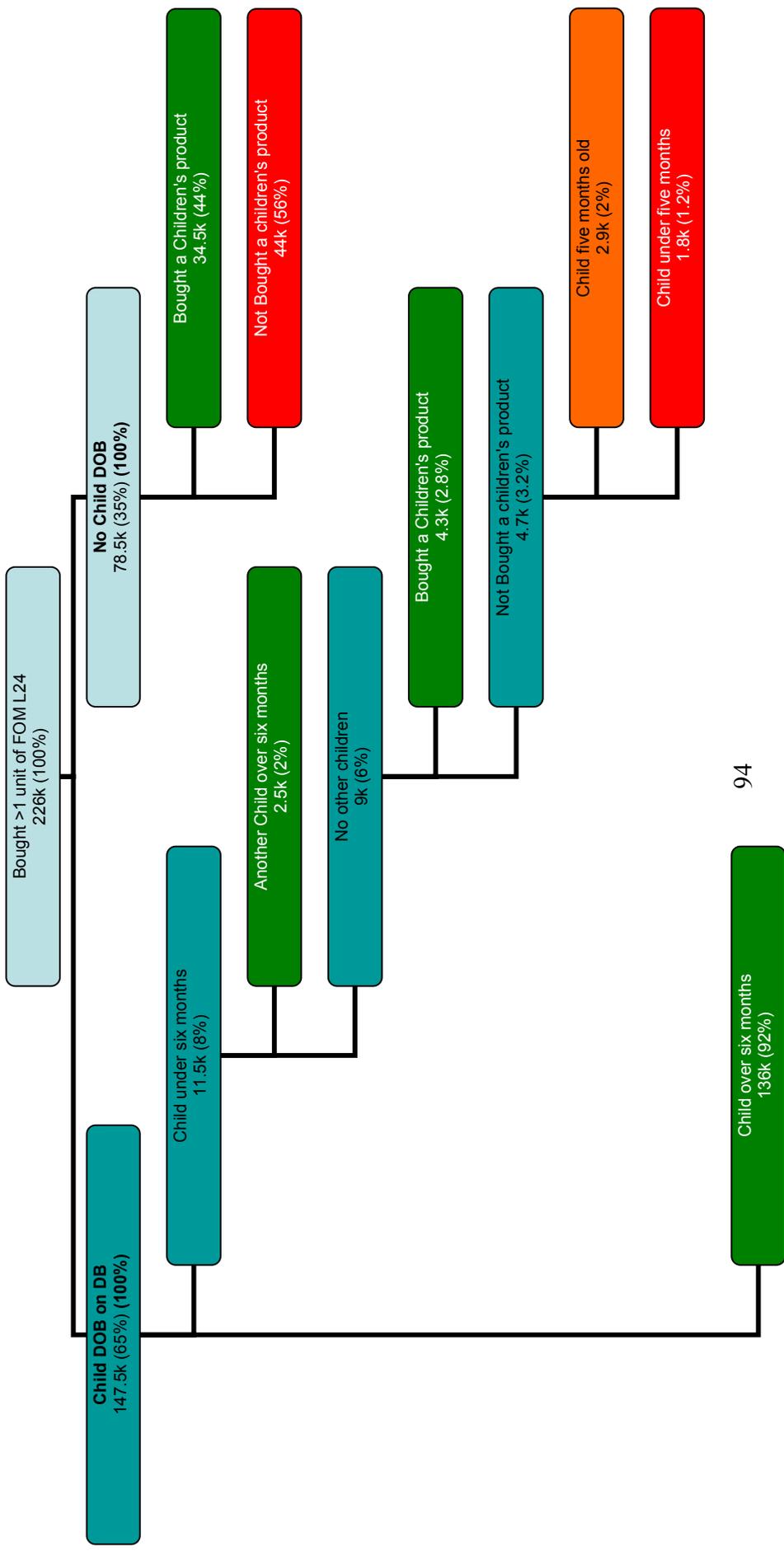
16. FURTHER INFORMATION

16.1 Further information on this project can be obtained from:

Clare Lowrie
Nutrition Division
Food Standards Agency
020 7276 8169
Clare.lowrie@foodstandards.gsi.gov.uk

Annex 7 Loyalty card analysis

Customer Summary Breakdown 2008/2009



Annex 8

Glossary and Definitions

<p>2007 Regulations</p>	<p>The Infant Formula and Follow-on Formula (England) Regulations 2007 (SI 2007/3521) www.opsi.gov.uk/si/si2007/pdf/uksi_20073521_en.pdf; The Infant Formula and Follow-on Formula (England) (Amendment) Regulations 2008 (SI 2008/2445) www.opsi.gov.uk/si/si2008/uksi_20082445_en_1; The Infant Formula and Follow-on Formula (Scotland) Regulations 2007 (SSI 2007/549) www.oqps.gov.uk/legislation/ssi/ssi2007/ssi_20070549_en_1; The Infant Formula and Follow-on Formula (Scotland) Amendment Regulations 2008 (SSI 2008/322) www.opsi.gov.uk/legislation/scotland/ssi2008/pdf/ssi_20080322_en.pdf; The Infant Formula and Follow-on Formula (Wales) Regulations 2007 (SI 2007/3573 (W.316)) www.opsi.gov.uk/legislation/wales/wsi2007/wsi_20073573_en_1; The Infant Formula and Follow-on Formula (Amendment) (Wales) Regulations 2008 (SI 2008/2602 (W.228)) www.opsi.gov.uk/legislation/wales/wsi2008/wsi_20082602_en_2; The Infant Formula and Follow-on Formula Regulations (Northern Ireland) 2007 (SR 2007/506) www.opsi.gov.uk/sr/sr2007/nisr_20070506_en_1; The Infant Formula and Follow-on Formula (Amendment) Regulations (Northern Ireland) 2008 (SR 2008/405) www.opsi.gov.uk/sr/sr2008/nisr_20080405_en_2</p>
<p>Advertisement</p>	<p>An individual representation that meets the definition of advertising. For example creative content that occupies paid for space in a magazine or on television that is used to promote a particular product.</p>
<p>Advertising</p>	<p>Any representation that is made in connection with a trade, business, or company in order to promote, either directly or indirectly, the supply, including sale or transfer, of infant and/or follow-on formula.</p>
<p>Advertising Attribute</p>	<p>A specific characteristic of an advertisement's content.</p>

ASA	Advertising Standards Authority
Attributes Associated with an Older Child	Those attributes parents and carers associate with an older child including head control, dexterity of arm movement, self-feeding, hair, teeth, sitting upright, smiling and crying.
Baby Friendly Initiative	A comprehensive package of measures and staff training with ongoing audit, assessment and external accreditation. It aims to encourage maternity hospitals to implement the 10 steps to successful breast feeding and practice in accordance with the International Code of Marketing of Breast milk Substitutes.
BMA	Baby Milk Action. Among other activities, BMA is the secretariat to the BFLG.
BFLG	Baby Feeding Law Group. A coalition of 22 health worker organisations and mother support groups, including NCT. BMA are the secretariat.
Case Style	Use of upper or lower case or a combination of the two.
Claim	Any message or representation, which is not mandatory under Community or national legislation, including pictorial, graphic or symbolic representation, in any form, which states, suggests or implies that a food has particular characteristics.
Clearcast	The company responsible for the pre-transmission examination and clearance of television advertisements.
Codex Alimentarius	A series of food standards and related texts that aim to provide a high level of consumer protection and fair practice in the international trade of food and agricultural products. The organisation charged with the development of the Codex standards and related texts is the Codex Alimentarius Commission (CAC), which is an intergovernmental body jointly sponsored by the Food and Agriculture Organisation (FAO) and the World Health Organisation (WHO).

Coding Frame	List of advertising attributes that were identified and used to assess advertisements in research project one.
Commercial Advertisement	Full advertisement shown within a commercial break.
Company Carelines	Telephone numbers provided by manufacturers for consumers seeking additional product related information.
Commission	European Commission
CWT	Caroline Walker Trust
DCFS	Department for Children Schools and Families
EFSA	European Food Safety Authority
Electronic Point of Sale Data	Electronic data about transactions captured at the till.
European Commission Directive 2006/141/EC	European Commission Directive 2006/141/EC on infant formulae and follow-on formulae and amending Directive 1999/21/EC. This is the underlying Directive implemented by the Regulations 2007.
Faster Paced Advertising	Television advertising that has more scene changes than other advertising.
Follow-on Formula	Foodstuff intended for particular nutritional use by infants when appropriate complementary feeding is introduced and constituting the principal liquid element in a progressively diversified diet of such infants. Follow-on formula is only suitable for infants over the age of six months.
Food Standards	A direct e-mail notification sent to registered researchers when new

Agency Research E-newsletter	research requirements are published.
Good Night milk	Follow-on formula that manufacturers instruct may be used at bedtime.
Health Claim	Any claim that states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health
Higher Resolution Colour Combination	Where the combination of the text colour against the background colour has a higher level of legibility and readability.
IDFA	Infant and Dietetic Foods Association
IFR – 1, IFR-2, IFR-3 etc	References to documents from review panel meetings. Documents can be accessed at http://www.food.gov.uk/healthiereating/nutcomms/infformreview/
Infant	Means children under the age of 12 months (definition from Directive 2006/141/EC)
Infant Formula	Foodstuffs intended for particular nutritional use by infants during the first months of life and satisfying by themselves the nutritional requirements of such infants until the introduction of appropriate complementary feeding. Infant formula is suitable from birth.
Information and evidence	The material considered by the panel when answering the questions set out in its remit.
International Code of Marketing of Breast-milk Substitutes	Code of practice adopted by the World Health Organisation, which aims to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breast feeding, and by ensuring the proper use of breast milk substitutes, when they are necessary, on the basis of adequate information and through appropriate marketing and distribution.

Key stakeholders	Those stakeholders that showed a particular interest during the consultation on the draft 2007 infant formula and follow-on formula Regulations.
LACORS	The Local Authorities Coordinators of Regulatory Services
Material	All those documents provided to the panel, including the information and evidence considered by the panel when answering the questions set out in the remit and that which provided the background and context for the review.
NCT	The National Childbirth Trust
New Controls	Regulations 19, 20, 21(1)(b) and 22 of The Infant Formula and Follow-on Formula Regulations 2007, which require infant formula and follow-on formula to be advertised and presented in such a way that enables consumers to make a clear distinction between such products so as to avoid any risk of confusion. As well as the Regulations “ <i>new controls</i> ” refers to the Food Standards Agency’s guidance notes on how to interpret these Regulations.
NICE Guidelines	Improving the Nutrition of Pregnant and Breast Feeding Mothers and Children in Low Income Households. National Institute for Health and Clinical Excellence 2008.
Nutrition claim	Any claim which states, suggests or implies that a food has particular beneficial nutritional properties due to the energy it provides, provides at a reduced or increased rate, does not provide or the nutrients or other substances it contains, contains in reduced or increased proportions or does not contain
Powerwalls	A technique used in retail premises at the point of purchase/sale to attract attention to brands and product ranges.
Presentation	The shape, appearance or packaging of infant formula or follow-on formula products, the packaging materials used, the way in which the products are arranged and the setting in which they are displayed. The review was asked to consider that aspect of

	“presentation” that covers the way in which the products are arranged and the setting in which they are displayed.
Print Advertisement	An advertisement shown in a hard copy publication, such as magazine, journal or newspaper.
Product Stage	Where an infant formula or follow-on formula product fits within a range and indicated by the manufacturer’s use of numbering. For example 1 (suitable from birth), 2 (suitable from birth, but for hungrier babies) and 3 (suitable from six months).
Promotion	Promotion – this term was taken to have the scope set out in regulation 23 of the 2007 Regulations (as amended); regulation 23 prohibits, at any place where infant formula is sold by retail: <ul style="list-style-type: none"> - any special display of an infant formula designed to promote sales - giving away free samples of infant formula or coupons which may be used to purchase infant formula at a discount - promotion of infant formula sales by means of premiums, special sales, loss-leaders, tie-in sales any other promotional activity to induce the sale of infant formula
Public Private Partnerships	Arrangements typified by joint working between the public and private sector to deliver policies, services and infrastructure.
Research Project One	Research conducted by the University of Leicester, Billett’s media monitoring and Site reports to establish the nature of infant formula and follow-on formula advertising and presentation.
Research Project Two	Research conducted by GfK NOP Social Research and the University of Kent to review the effectiveness of the controls on infant formula and follow-on formula.
Research Project Three	Analysis of Boot’s Advantage Card data to compare the purchase of follow-on formula with likely household composition.
Scientific Publication	Scientific publications are usually published periodically (at regular or irregular intervals) and aimed at academics and/or professionals

	<p>in a scientific field, such as GPs, nurses and midwives. They consist of an aggregation of original articles by different authors published under an umbrella title. Articles include those that report new scientific research or review existing scientific research. They may also include editorials, opinion pieces and book or other reviews dealing with a scientific theme. In addition, they</p> <ul style="list-style-type: none"> • are static, rather than dynamic (i.e. the core content is fixed at the time of publication), • may have been assigned an ISSN
Shelf Talkers	Advertisements displayed on store shelves.
Sponsorship slot	Usually a short credit shown at the beginning and end of a television programme.
Transitional Arrangements	A period of time during which legislative requirements will not apply, wholly or in part, to products compliant with the previous Infant Formula and Follow-on Formula Regulations, as amended.
Weaning	In this report weaning relates to the diversification of an infant's diet by introducing other foods in addition to either breast milk or a breast milk substitute. *****
Young Children	Means children aged between one and three years (definition from Directive 2006/141/EC)

***** Traditionally, and still to purists, it means the process of discontinuing breast feeding.

Annex 9 References to material submitted by key stakeholders

Material submitted between June 2008 and October 2008

Reference number	Reference in paper IFR 21	Organisation	Summary
1	Annex 2	Baby Milk Action on behalf of The Baby Feeding Law Group (BMA/BFLG)	The Irish Institute of Advertising Practitioners Advertising Effectiveness Awards, honour the most effective advertising campaigns appearing in the Irish and International markets. The material submitted specifically relates to Cow and Gate “step-up”, which won the silver award in the new product launch category in 1996.
2	Annex 3	Baby Milk Action (BMA)	Material relating to the European Commission’s position on infant feeding from 2000 and 2001.
3	Annex 4	Baby Feeding Law Group (BFLG)	A letter which was sent to the Minister of State for Health, Hazel Blears, in August 2002, which explains the BFLG’s concerns relating to the claims “HA” and “hypoallergenic”.
4	Annex 5	BFLG	A letter sent to the Food Standards Agency in January 2005. This relates to the negotiations on the Directive on infant formulae and follow-on formulae which underpins the new controls that have since been introduced.
5	Annex 6	BFLG	A letter sent to the Secretary of State for Health, Patricia Hewitt, in February 2006, which explains the BFLG’s concerns in relation to the Health Bill.

6	Annex 7	BMA/BFLG	A document summarising infant formula manufacturers' marketing tactics during 2006.
7	Annex 8	BMA/BFLG	A summary of the BFLG's views on follow-on formula and concerns relating to the way this is advertised.
8	Annex 9	BFLG	The BFLG response to the consultation on the revised Infant Formula and Follow-on Formula Regulations, which took place from June 2007 to September 2007.
9	Annex 10	BFLG	A letter sent from the Royal Colleges to Dawn Primarolo, the Minister of State for Health, in December 2007, which expresses concerns relating to the new controls.
10	Annex 11	National Childbirth Trust (NCT)	Examples of, and commentary on, advertising of infant formula and follow-on formula to health professionals.
11	Annex 12	NCT	Examples of, and commentary on, perceived breaches of the Regulations. The NCT provided the panel with the following link to associated pictures: http://picasaweb.google.co.uk/nctRosemaryDodds/2008PromotionExamples?authkey=92Q2RXBdbp8#
12	Annex 13	NCT	An article from the April 2008 addition of "The practising midwife", which includes details on how to prepare formula milk.
13	Annex 14	NCT	Highlighted a Cochrane review of commercial discharge packs. The panel was asked to note that this review has now been withdrawn as it is considered to be out-

				of date.
14	Annex 15	NCT		Highlighted the 2008 NICE recommendations relating to the promotion and advertising of infant and follow-on formula (specifically pages 34 –42).
15	Annex 16	BMA/BFLG		The BMA/BFLG monitoring project quarterly report for May 2008, which collates and summarises perceived breaches of the legislation and is provided to The Local Authorities Coordinators of Regulatory Services (LACORS).
16	Annex 17	BMA/BFLG		The BMA/BFLG monitoring project quarterly report for August 2008, which collates and summarises perceived breaches of the legislation and is provided to LACORS.
17	Annex 18	NCT		Cow & Gate leaflet that was sent out with a birth certificate.
18	Annex 19	BMA		A copy of a letter from the Advertising Standards Authority about its inability to investigate complaints about indirect promotion of infant formula.
19	Annex 20	British Dietetic Association		The British Dietetic Association’s views, and the views of their members, on the marketing of infant formula and follow-on formula.
20	Annex 21	The Unite/Community Practitioners’ and Health Visitors’ Association		Details of the criteria applied to advertisements before they can be placed in the monthly journal “Community Practitioner”.

21	Annex 22	Local Authority Co-ordinators of Regulatory Services. (LACORS)	Details of LACORS' role and the role of enforcement authorities in the enforcement of the infant formula Regulations. LACORS also comments on the compliance of formula advertisements and labels with the legislation.
22	Annex 23	Advertising Standards Authority (ASA)	The ASA's remit and procedures, together with details of the complaints that have been raised with the ASA in relation to infant formula and follow-on formula advertising
23	Annex 24	Hipp UK	Sales data, details regarding the nature of enquiries to its information line and details of its advertising policy.
24	Annex 25	BMA	Limited details about a study conducted by the Canadian Infant Feeding Action Coalition, a Canadian national non-governmental organisation, that works to protect infant and young child health as well as maternal well-being through the promotion and support of breast feeding and optimal infant feeding practices.
25	Annex 26	BMA	Referred the panel to a study conducted in Austria on infant feeding practices. Annex 26 is a translation of the relevant sections of this study.
26	Annex 27	BMA and NCT	Paper by Kaplan DL, Graff KM. Marketing Breastfeeding – Reversing Corporate Influence on Infant Feeding Practices. <i>Journal of Urban Health: Bulletin of the New York Academy of Medicine.</i> (2008)

27	Annex 28		Paper by Howard et. al. Office Prenatal Formula Advertising and its Effect on Breast-Feeding Patterns. <i>Obstetrics & Gynecology</i> . (2000) Vol. 95, No. 2
28	Annex 29		Paper by Rosenberg KD, Eastham CA, Kasehagen LJ and Sandoval AP. Marketing Infant Formula Through Hospitals: The Impact of Commercial Hospital Discharge Packs on Breastfeeding. <i>American Journal of Public Health</i> . (2008) Vol 98, No. 2: 290-295

Material submitted between October 2008 and March 2009

Reference number	Annex to paper IFR - 33	Organisation	Summary
29	Annex 2	BMA	A letter dated 16 th January 2006 from the Finnish Ministry of Trade and Industry to the Commission regarding the evaluation of new ingredients used in infant and follow-on formula and the new controls relating to consumer confusion.
30	Annex 3	BFLG	A letter dated 7 th February 2006 from the BFLG to the Parliamentary Under Secretary of State for Public Health, Caroline Flint, regarding infant formulas containing partially hydrolysed proteins.
31	Annex 4	BFLG	A letter dated 10 February 2006 from the BFLG to the Secretary of State for Education and Skills, Ruth Kelly, outlining its views on the Education White Paper and the implications of business sponsorship on infant and young child health.
32	Annex 5	BFLG	May 2006 response to the BFLG's letter to the Secretary of State for Health, Patricia Hewitt, in relation to the Health Bill (Original letter provided as annex 6

				of paper IFR – 26).
33	Annex 6	BMA		A summary of correspondence between Baby Milk Action and Robert Madelin, Director General of the European Commission (DG SANCO) regarding health measures in the context of the single market.
34	Annex 7	BMA/BFLG		BFLG response to the Food Standards Agency regarding the proposed Regulations on infant and follow-on formula.
35	Annex 8	BMA/BFLG		Complaint made by Baby Milk Action to the European Ombudsman regarding the European Commission’s handling of the negotiation of Directive 2006/141/EC on infant and follow-on formula.
36	Annex 9	BMA/BFLG		Response from the European Ombudsman to Baby Milk Action regarding the complaint outlined in Annex 8 to paper IFR-33.
37	Annex 10	BFLG		The BFLG document “trying to make the UK’s weak formula law work” which represents its response to the consultation on the Food Standards Agency’s guidance notes on the infant formula and follow-on formula Regulations 2007.
38	Annex 11	BMA		The request made to the United Kingdom by the United Nation’s Committee on the Rights of the Child.
39	Annex 12	BMA		Baby Milk Action’s response to the Department of Children Schools and Families’ consultation: Assessing the Impact of the Commercial World on Children’s Wellbeing.

40	Annex 13	BMA	The Breastfeeding Network response to the Department of Children Schools and Families' consultation: Assessing the Impact of the Commercial World on Children's Wellbeing.
41	Annex 14	BMA/BFLG	The BMA/IBFAN/BFLG and Breastfeeding Manifesto Coalition's comments on EFSA's consideration of health claims on foods for children from 8 th August 2008.
42	Annex 15	BMA	A report by the United Nation's Committee on the Rights of the Child.
43	Annex 16	BMA	The minutes from the workshop on private public partnerships held as part of the EU platform for Action on Diet, Physical Activity and Health
44	Annex 17	Advertising Standards Authority (ASA)	A copy of a letter sent to Baby Milk Action in response to their August 2008 monitoring project quarterly report (this report was provided as Annex 17 to paper IFR – 21)
45	Annex 18	BMA/BFLG	The BFLG monitoring project quarterly report for February 2009, which collates and summarises perceived breaches of the legislation and is provided to LACORS.
46	Annex 19	Caroline Walker Trust	A review of the discussions of parents and parents-to-be around formula and formula feeding on web discussion sites.
47	Annex 20	BMA/BFLG	The BFLG's response to the panel's questions and some commentary on additional documents provided.

48	Annex 21	BMA/BFLG	A summary of the marketing strategies used by the UK formula industry. This is from March 2009 and up-dates the “Hard Sell” document previously submitted (Annex 7 of paper IFR 21)
49	Annex 22	Royal College of Midwives	Views of the Royal College of Midwives on infant feeding and advertising of infant and follow-on formula in their bi-monthly “midwives” magazine.
50	Annex 23	NCT	The National Childbirth Trust’s response to the panel’s questions and examples of current advertising practice.
51	Annex 24	LACORS	LACORS response to the panel’s questions and their views on current advertising practice and the controls on this.
52	Annex 25	Buckinghamshire Trading Standards	Examples of advertisements from scientific publications, upon which they have received complaints.
53	Annex 26	ASA	The ASA’s response to the panel’s questions.
54	Annex 27	Infant and Dietetic Foods Association Limited (IDFA)	IDFA’s response to the panel’s questions and data relating to the infant and follow-on formula market.
55	Annex 28	Nutricia (manufacturer)	Response to the panel’s question regarding a Cow & Gate leaflet reportedly sent out with a birth certificate (a section of this leaflet was provided as Annex 18 to

			of Cow & Gate)	paper IFR – 21).
56	Annex 29	Hipp		Hipp’s response to the panel’s questions.
57	Annex 30	BFLG		Additional material regarding the European Commission’s position on infant feeding, including a copy of associated legislation from Luxembourg, and the European Food Safety Authorities’ assessment of health claims.

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